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FEDERAL MEDIATION AND CONCILIATION SERVICE
BEFORE ARBITRATOR STEVEN RUTZICKLINCOLN FIREFIGHTERS) FMCS CASE NO.
ASSOCIATION, IAFF LOCAL) 22103-00847
644, and AMANDA BENSON,)

Grievants,)

vs.) VOLUME I

) PAGES 1-280

CITY OF LINCOLN,)

Respondent.)

)

ARBITRATION HEARING held before
Arbitrator Steven Rutzick (via Zoom), with
Vickie L. Quinn, CCR and Notary Public for the
State of Nebraska, counsel and all parties
present at the City-County Building, 555 South
10th Street, Suite 300, Lincoln, Nebraska,
beginning at 9:35 a.m., on the 20th day of June,
2022.

* * * * *

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A P P E A R A N C E S

FOR THE GRIEVANTS:

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MS. ABIGAIL LITTTRELL
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ALSO PRESENT: Mr. Ryan Moser, Vice President
IAFF Local 644; Mr. Dave Engler, Fire Chief;
Tiffany Leasure, Paralegal for City of Omaha

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3 1 8/16/21 Memorandum and Order Denying
4 Plaintiff's Motion for Injunction by
5 Senior District Judge Richard G.
6 Kopf, United States District Court
7 for the District of Nebraska,
8 8/15/21
9 2 Declaration of Fire Chief David
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11 3 Declaration of BC Michael Smith
12 4 Declaration of Captain Mahler
13 5 Declaration of FAO Matt Roberts
14 6 Declaration of FF Morgan Hurley
15 7 Declaration of FF Jason Love
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17 9 Declaration of FF Trent Borchers
18 10 Statement of Curt Faust
19 11 8/19/21 Investigation Report into
20 4/26/21 Fire Incident by Attorney
21 Torrey Gerdes, Baylor Evnen Law Firm
22 12 Audio of Fire Department Radio
23 Recording of 4/26/21 Warehouse Fire
24 13 Transcript of Fire Department Radio
25 Recording of 4/26/21 Warehouse Fire
26 14 Declaration of Aishah Witte,
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28 15 Benson's 5/5/21 Complaint Regarding
29 the 4/26/21 Warehouse Fire
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1 CITY EXHIBITS, CONT'D

2 EXHIBIT DESCRIPTION

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4 18 Benson's 6/9/21 Grievance
5 19 Benson's 6/11/21 Affidavit
6 20 Benson's 8/9/21 Affidavit
7 21 Media Articles
8 22 Benson's Interview Audio 7/14/21
9 23 8 of '21 Grievance Hearing RE:
10 June 9, 21 Grievance
11 24 9/24/21 Denial of 6/9/21 Grievance
12 Letter to Benson
13 25 9/27/21 Pre-Disciplinary Meeting
14 Notice Letter to Benson
15 26 Audio of 10/12/21 Pre-Disciplinary
16 Meeting
17 27 Transcript of 10/12/21 Meeting
18 28 10/19/21 Termination Letter
19 29 CBA, 8/20/20 to 8/31/21
20 30 CBA, 8/19/21 to 8/30/23
21 31 LFR Professional Code of
22 Ethics/Standard of Conduct Policy
23 32 LFR FF Safety Policy
24 33 LFR 2020 Annual Report
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10	126 Declaration of Michael Smith
11	127 Declaration of Matthew Roberts
12	128 Declaration of Morgan Hurley
13	129 Declaration of Trent Borchers
14	130 Declaration of Stephen Dyers
15	131 Declaration of Jason Love
16	132 Declaration of Shawn Mahler
17	133 Grievance Letter
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20	Effective Use of Division & Group
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<p style="text-align: right;">Page 13</p> <p>1 * All exhibits offered with objections to 2 Union's 101, 102, 103, 147, 149, 150; and City 3 Exhibits 20, 21, 38, 46, and 47</p> <p>4 * Union Exhibit 149 was offered and received on 5 page 142 6 * Union Exhibit 150 was offered on page 143 and 7 received on page 144</p> <p>8 * Union Exhibit 156, Telephone Log Activity, was 9 marked on page 750 10 * City Exhibit 156, E-mail to Aishah from 11 Mahler, was marked on page 1738</p> <p>12 * City Exhibit 50 was marked on June 22nd, 2022, 13 offered and received on page 571</p> <p>14 *** ** *</p> <p>15 16 17 18 19 20 21 22 23 24 25</p>	<p style="text-align: right;">Page 14</p> <p>1 (At 9:35 a.m., the following 2 proceedings were had:)</p> <p>3 THE ARBITRATOR: Good morning. 4 I'm Steve Rutzick. I'm the arbitrator today 5 between Lincoln Firefighters Association, Local 6 644 and Amanda Benson, and the City of Lincoln. 7 Counsel, anything preliminary? 8 MS. GUTTAU: Sorry. I missed 9 that.</p> <p>10 THE ARBITRATOR: Counsel, 11 anything preliminary? 12 MS. GUTTAU: Oh, I think just 13 introductions, and we'd like to reserve our 14 right for rebuttal for the City, and we can 15 offer exhibits, both sides, I believe.</p> <p>16 THE ARBITRATOR: All right. 17 Well, let's have the parties note their 18 appearance for the record to start with. Go 19 ahead.</p> <p>20 MS. GUTTAU: Okay. My name's 21 Heidi Guttau. I'm with Baird Holm Law firm in 22 Omaha, Nebraska. I represent the City of 23 Lincoln. And I have with me at my table -- And 24 you probably can't see, but you'll see him 25 shortly. I have Fire Chief Dave Engler, and</p>
<p style="text-align: right;">Page 15</p> <p>1 then I have my co-counsel at the end of the 2 table -- she'll be in the screen after a while 3 -- Abigail Littell, and then we also have our 4 paralegal here, Tiffany Leasure, and she's kind 5 of sitting back here, helping out if we need 6 anything, so. And if you need --</p> <p>7 THE ARBITRATOR: Okay. 8 MS. GUTTAU: -- anything 9 e-mailed, she can do that for you.</p> <p>10 THE ARBITRATOR: That's fine. 11 John?</p> <p>12 MR. CORRIGAN: John Corrigan on 13 behalf of Local 644. I'm with the law firm of 14 Dowd & Corrigan. And with me at counsel table 15 is Amanda Benson, the grievant, and also Ryan 16 Moser, who is a union officer and has been 17 thrust into the technical difficulties today as 18 a result of another union officer becoming ill. 19 So we're here to present the 20 case.</p> <p>21 THE ARBITRATOR: All right. 22 Shall we begin? Do you want to call your first 23 witness?</p> <p>24 MS. GUTTAU: Do you want us to 25 offer exhibits first and any objections? Is</p>	<p style="text-align: right;">Page 16</p> <p>1 that all right?</p> <p>2 THE ARBITRATOR: Sure. Okay. 3 MS. GUTTAU: I think there won't 4 be a whole lot of objections, just a few.</p> <p>5 So first of all, on behalf of the 6 City, again, we would request the right to 7 present rebuttal at the end of the defendant's 8 case -- or, I'm sorry, at the end of the 9 grievant's case.</p> <p>10 We'd like to offer exhibits. We 11 have Exhibits 1 through 49 that have been sent 12 and provided to the grievants.</p> <p>13 THE ARBITRATOR: Hang on one 14 second. Did you send me anything formal or 15 just, just by e-mail?</p> <p>16 MS. GUTTAU: There should be a 17 big binder that got sent to your office.</p> <p>18 THE ARBITRATOR: Okay. I got it. 19 MS. GUTTAU: Okay.</p> <p>20 THE ARBITRATOR: Mr. Corrigan, 21 any objection to these? I assume you've had a 22 chance to look at them?</p> <p>23 MR. CORRIGAN: So, yes, Your 24 Honor, the objections we have are Exhibits 20, 25 21, 38, 46, 47, and that's it.</p>

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1 THE ARBITRATOR: You're objecting
2 to those?
3 MR. CORRIGAN: Yes.
4 THE ARBITRATOR: All right.
5 We'll deal with them when we come to those. All
6 right. Everything else is admitted.
7 MR. CORRIGAN: The Union would
8 like to offer the exhibits that -- and we had
9 forwarded you a binder, as well, a couple of
10 binders.
11 THE ARBITRATOR: Yeah, I've got
12 them.
13 MR. CORRIGAN: All right.
14 Exhibits 1 through -- I'm sorry, 100 through
15 155.
16 THE ARBITRATOR: Okay. What
17 about them? You are offering those?
18 MR. CORRIGAN: Yes.
19 THE ARBITRATOR: Any objection to
20 those?
21 MS. GUTTAU: Yes. We have
22 objections to Exhibits 101, 102, 103, 147, and
23 149 and 150. Exhibit 141, there is just one
24 person missing off of that, but we can clear
25 that -- clear that up, I think, during

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1 testimony, so.
2 THE ARBITRATOR: All right.
3 Again, we'll deal with those when we come to
4 them.
5 MS. GUTTAU: Okay.
6 THE ARBITRATOR: You want to call
7 your first witness?
8 MS. GUTTAU: Yes. We're going to
9 call Lincoln Fire Chief Dave Engler.
10 MR. CORRIGAN: And if I can just
11 interrupt for a second, Mr. Rutzick. Just to
12 clarify, both sides submitted issue statements,
13 and I don't know if you have any desire to
14 discuss those prior to implementing the start of
15 the hearing, but I just raise that because
16 that's normally something we would do at this
17 point in time.
18 THE ARBITRATOR: I'm sorry. I
19 didn't hear what you said.
20 MR. CORRIGAN: Both sides issued
21 -- or, provided to you issue statements,
22 statements of the issue, and I don't -- I didn't
23 know if you wanted to address the differences or
24 if you saw any difference in those, prior to the
25 commencement of the hearing.

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1 THE ARBITRATOR: Let's leave
2 those for the end.
3 MR. CORRIGAN: Okay.
4 CHIEF DAVID THOMAS ENGLER,
5 Having been sworn to tell the truth,
6 the whole truth and nothing but the
7 truth, testified as follows:
8 THE ARBITRATOR: All right.
9 State and spell your name for the record, sir.
10 THE WITNESS: My name is David
11 Thomas Engler, D-A-V-I-D, T-H-O-M-A-S,
12 E-N-G-L-E-R.
13 THE ARBITRATOR: Proceed.
14 MS. GUTTAU: Thank you.
15 DIRECT EXAMINATION
16 BY MS. GUTTAU:
17 Q Chief Engler, how long have you been
18 the Lincoln Fire & Rescue chief?
19 A A little over a year.
20 Q And we'll get into your background a
21 little bit more, but do you also have a
22 background on the labor side, on the Union side?
23 A I do.
24 Q And with that extensive background on
25 the Union side, is it fair to say that you tried
to give Ms. Benson the benefit of the doubt in

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1 your decision-making?
2 A Yes, it is.
3 Q And as you know, Ms. Benson has a
4 long-pending federal lawsuit naming several
5 individuals as defendants; correct?
6 A That's correct.
7 Q Including the City?
8 A Yes.
9 Q At the time you made the termination
10 decision, you've never been individually named
11 in the lawsuit, have you?
12 A I have not.
13 Q We'll go through the reasons for
14 Ms. Benson's termination in detail, but can you
15 tell the Arbitrator, generally, just to start
16 off with, why did you discharge Ms. Benson?
17 A The, the reason for the discharge was
18 that we had an incident that was reported to us,
19 and through the -- through the overall
20 investigation, we found that the story that was
21 initially provided to us wasn't the same as what
22 the investigation found.
23 Q Okay. Did you conclude that she had
24 made false allegations against Captain Mahler
25 about a warehouse fire?

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1 A Yes, I did.

2 Q What was one of the most -- What were
3 some of the concerns you had when you discovered
4 that she had made these false accusations?

5 A A number of things. I felt it made
6 the, the department look bad in the media, and,
7 and it wasn't only the local media, but it was
8 in national media with, with fire publications.

9 It -- I had a number of, of people
10 that had believed that the, the accused fire
11 captain was guilty without, without
12 understanding the story, and, and so they were
13 demanding that he be fired.

14 We had personnel internally that did
15 not -- they had -- they raised concerns about
16 working with Ms. Benson because they, they were
17 concerned that they were either going to be
18 brought in on a lawsuit or they were going to be
19 falsely accused of something.

20 We were going through a recruitment
21 cycle at the time and we had three female
22 employees that we were looking at hiring and
23 within a couple days of the, the paper --
24 newspaper article, three of them had withdrawn
25 their application to the department. They

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1 didn't cite a specific reason, so it could have
2 been for other reasons, but just based on the
3 timeliness, that was a little concerning,
4 especially when we're trying to recruit a
5 diverse workforce.

6 And then, certainly, the last factor
7 is the cost of the, the investigation, the
8 overtime, the, the changes in staffing was
9 significant.

10 Q And she had requested the
11 investigation; correct?

12 A Yes.

13 Q Okay. To your knowledge, do you know
14 what City Legal paid for the investigation?

15 A I've been told it was over \$80,000.

16 Q Did you --

17 THE ARBITRATOR: How much?

18 THE WITNESS: 80,000 -- It was
19 over \$80,000. I don't have an exact number. It
20 was paid for by City Legal, so it wasn't paid
21 for by the fire department.

22 Q (By Ms. Guttai) Did you also lose the
23 services of the accused firefighter, Captain
24 Mahler?

25 A Yes, we did.

Page 23

1 Q And that's because he was placed on
2 leave?

3 A Yeah, we placed him -- we placed him
4 on leave with pay, so we had to cover his shifts
5 in overtime for the majority of the time off.

6 Q Okay. So let's circle back a little
7 bit with your background. Could you share with
8 the Arbitrator your educational and job history?

9 A Sure. I, I started with the Kansas
10 City, Kansas fire department in, I think it was,
11 1994. In 1996, I came to the Lincoln, Lincoln
12 Fire & Rescue as a firefighter paramedic. I
13 worked as a firefighter paramedic until 2006, I
14 was promoted to fire captain; and in 2018
15 promoted to battalion chief; in 2020 acting fire
16 chief; and then in 2021 was named the fire
17 chief.

18 Q And can you describe your background
19 on the labor/union side of things before you
20 entered management?

21 A Yeah. I was -- I was an officer in
22 Local 644. Starting in 1999, I was elected to
23 secretary, shortly thereafter vice president,
24 and then in -- I think it was around 2008,
25 became the president of the local until 2014. I

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1 was also the vice president of the State
2 Firefighters Association, and then the president
3 of the State Firefighters Association, I believe
4 from about 2004 until 2014.

5 I was the second district field
6 services representative with the International
7 Association of Firefighters for several years --
8 I can't remember the years -- up until 2014.

9 In 2014 I took a leave of absence from
10 the fire department and worked with a law firm
11 as a labor consultant in California,
12 representing primarily public safety employees,
13 and then returned in 2015.

14 Q As fire chief now, what are your --
15 can you describe your job responsibilities.

16 A Well, I -- I'm appointed by the mayor
17 to oversee the fire department. You know, that
18 includes budget, operations, anything within the
19 fire department. Working with other departments
20 to ensure smooth services throughout the city.
21 Dealing with, with any issues concerning the
22 fire department.

23 Q Okay. And on December -- In December
24 2020 --
25 2020 or 2021?

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1 interactions with her before you became fire
2 chief?

3 A Not, not before I became a battalion
4 chief. I worked on a different shift across
5 town so I didn't know her very well. We didn't
6 have a whole lot of interactions.

7 Q Okay.

8 A As battalion chief, she was assigned
9 initially to Station 3, Engine 3 on C shift,
10 which is an outstanding crew, and so I, I did
11 get to know her as I did station visits and
12 everything there.

13 Q Okay. Who's the captain of that crew
14 at that time?

15 A Captain Dan Ripley.

16 Q Okay.

17 MS. GUTTAU: That's R-I-P-L-E-Y,
18 sir.

19 THE ARBITRATOR: Okay.

20 Q (By Ms. Gutttau) So once you became
21 battalion chief or into management, did you
22 become aware, at some time, that she had had a
23 lawsuit pending against Lincoln Fire & Rescue
24 since about 2018?

25 A Yes. And, and it was in the paper, so

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1 it was -- it was well known.

2 Q Okay. And you didn't have a lot of
3 involvement, though, with the issues that gave
4 rise to that lawsuit at that time?

5 A No. And when it first occurred, might
6 have been during my time in California. I --
7 I'm not sure. But I really wasn't aware of the
8 specifics.

9 Q Okay. And once you did become chief,
10 did you field some complaints from her at that
11 time?

12 A Yes.

13 Q And what -- Can you tell us what those
14 were?

15 A I think a couple of days after I
16 started as battalion chief, her captain had
17 called me and she was having trouble with an
18 employee named Alex Martin, and the captain said
19 that, that he needed something done about it,
20 and so I evaluated the situation. I moved
21 Captain Martin -- I removed him from that
22 station and placed him at, at a different
23 location.

24 Q Okay. Any other complaints that you
25 fielded?

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1 A Not that I can remember.

2 Q Okay. Did she ever express a
3 complaint to you regarding USAR or Captain Mu --
4 Miller -- Mahler?

5 A Yeah, I don't -- I don't think that
6 was directly to me, but I was aware that she had
7 a concern with, with USAR.

8 Q Do you know what that concern was?

9 A I really am not sure.

10 Q That's fine.

11 A Yeah.

12 Q And were there any complaints that you
13 fielded in April of 2021? Just if you could
14 tell us generally, and we'll go through in more
15 detail.

16 A Yes. There were -- There were a
17 couple of complaints. She had expressed some
18 concerns about a discussion at, at a -- I can't
19 remember if it was the coffee table or the table
20 downstairs on the apparatus floor -- between
21 Matt Woitalewicz, Chad Roof, and I think Brady
22 Papik, and so I had that investigated.

23 There was a complaint --

24 THE ARBITRATOR: Was she part of
25 that?

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1 THE WITNESS: She, she, she made
2 the complaint, and I, I think it was that they
3 were -- they were talking about her or -- It, it
4 centered around training, I believe.

5 Q (By Ms. Gutttau) Did you move them --
6 Did you move Captain Roof and Matt Woitalewicz
7 out of that station pending investigation?

8 A I did.

9 Q And took her complaint seriously?

10 A Yes.

11 Q Okay. After investigation, was it
12 concluded they were unfounded?

13 A Yes.

14 Q And did you return them to the station
15 at that time?

16 A I did.

17 Q Okay. Over the years now that you've
18 been involved with the lawsuit and, and since
19 becoming chief or battalion chief before that,
20 do you know of others that she has made
21 complaints against?

22 A Yes. There was another complaint
23 against Shawn Mahler about saying something at
24 training about her.

25 Q Okay. Has she made complaints about

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1 MS. GUTTAU: Okay.
2 Q (By Ms. Gutttau) When you removed
3 Captain Roof after Ms. Benson made a complaint
4 -- Well, first of all, who's Captain Roof?
5 A He was the captain on Engine
6 Company 1, C shift. So he was -- He was the
7 captain on the engine. She was the captain --
8 the acting captain on the truck company.
9 Q To your knowledge, have there been any
10 -- or how -- About how long had he been a
11 firefighter?
12 A He was on the job before me, so I'm
13 gonna guess 27, 28 years.
14 Q Okay. To your knowledge, in his 27-
15 or 28-year career, was he ever removed from
16 service or disciplined for similar issues at any
17 time?
18 A I believe as a firefighter he was, but
19 not since he's become a captain.
20 Q And how long has he been a captain?
21 A Before me, so I'm gonna estimate maybe
22 2004 or '05 he was promoted.
23 Q When you trans --
24 THE ARBITRATOR: What's his name
25 again?

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1 -- many years ago, before he became a
2 firefighter.
3 Q When you removed Captain Roof and
4 Firefighter Woitalewicz, is that disruptive to
5 operations?
6 A Yes.
7 Q In what way?
8 A Well, we're removing them from their
9 station, and, you know, there is -- there is
10 always the desire to keep crews together because
11 they, they function better. It's kind of like a
12 team, and if you bring someone else in, the team
13 will function, but it won't function as good.
14 And then we have to find specific
15 spots for them, and, and that can be -- that can
16 be challenging.
17 Q And just for a timeline --
18 THE ARBITRATOR: Hold on. Just
19 so I'm getting this, you're saying she made a
20 complaint, and then you had to move them from
21 the station to somewhere else? Is that what
22 you're saying?
23 THE WITNESS: Yes. I, I moved
24 them to other locations during that time. There
25 wasn't a requirement, but I felt that that was

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1 THE WITNESS: Captain Chad Roof,
2 R-O-O-F.
3 THE ARBITRATOR: R what?
4 THE WITNESS: R-O-O-F.
5 THE ARBITRATOR: Okay.
6 Q (By Ms. Gutttau) And who was the other
7 firefighter that you transferred out pending
8 investigation?
9 A Matt Woitalewicz.
10 Q And can you spell that?
11 A I'm not gonna even try.
12 MS. GUTTAU: We'll get you the
13 spelling on that. It's a tough one.
14 THE ARBITRATOR: All right.
15 Q (By Ms. Gutttau) Can you tell me about
16 Matt Woitalewicz, what kind of firefighter he
17 is?
18 A He's got a -- He's got a very good rep
19 -- He's a young firefighter. He does a lot of
20 training. He has a good reputation as a
21 firefighter.
22 Q Do you know why he's really gung ho
23 about training?
24 A His dad died in the line of duty on a
25 different -- on a volunteer fire department sev-

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1 the best way to conduct the investigation
2 without having an ongoing disruption in service.
3 THE ARBITRATOR: And you're
4 saying you did this because she made a complaint
5 about both of them?
6 THE WITNESS: Yes.
7 THE ARBITRATOR: Okay. All
8 right. Go ahead.
9 Q (By Ms. Gutttau) Did you then have
10 somebody conduct the investigation?
11 A Yes, I did.
12 Q And who was that?
13 A The administrative officer, Aishah
14 Witte.
15 Q And can you tell me, what -- why do
16 you have her -- why did you have her do the
17 investigation?
18 A Aishah is the administrative officer,
19 and she was -- prior to my being fire chief, she
20 was designated to handle the HR issues. She
21 worked for the Nebraska Department of Health and
22 Human Services and conducted investigations
23 there, and then she took the managing
24 disciplinary issues in the fire service from
25 Curt Varone, which was, I believe, a four-day

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1 course that covered how to conduct
2 investigations.
3 She also had completed her SHRM CP,
4 which is a human resources designation that,
5 that covers investigations. So I felt, when I
6 looked at, at all the possible parties that
7 could do an investigation -- and she's also --
8 She also went to law school and completed law
9 school. So all those things, I felt that she
10 was a good choice to do the investigation. Plus
11 she's administrative, so if I -- if I would have
12 had chief officers do it, they're working shift
13 work and so they could be off on their days off.
14 So it just made sense at the time.
15 MS. GUTTAU: And, again, just for
16 your reference, Mr. Rutzick, Exhibit 45 is that
17 investigation, and we'll present her as a
18 witness later to discuss that in more detail.
19 THE ARBITRATOR: All right.
20 Q (By Ms. Gutttau) So this was -- This
21 complaint was around April -- beginning of April
22 of 2021, so within a few weeks of the warehouse
23 fire?
24 A Yes.
25 Q Okay. And what did Aishah's

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1 investigation conclude?
2 A It concluded that it was unfounded.
3 Q And returned the firefighters to
4 service?
5 A Yes.
6 Q So now I want to move ahead a couple
7 of weeks and just a few days before the
8 warehouse fire. Did you learn of further
9 complaints by Ms. Benson?
10 A Yes, I did.
11 Q Okay. Tell me what that was.
12 A Aishah Witte, my administrative
13 officer, informed me that she was contacted by
14 Ms. Benson about Shawn Mahler's conduct at a
15 ladder training that was, was done in which he
16 apparently was saying things about her.
17 Q Okay. And do you know who had
18 reported that to Ms. Benson?
19 A It was reported by Jessie Lundvall.
20 Q And who was she?
21 A She was a firefighter assigned to the
22 training division to conduct training.
23 Q Did you later discharge her for
24 unrelated charges of dishonesty?
25 A Yes, I did.

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1 Q Was Ms. Benson even present when
2 Captain Mahler allegedly made these statements
3 about her?
4 A No.
5 Q Nonetheless, did you take her
6 complaint seriously?
7 A Yes, I did.
8 Q What did you do next?
9 A I asked Ms. Lundvall for the specific
10 information, had it forwarded to Aishah Witte,
11 and began an investigation.
12 Q Okay. And what did Witte's
13 investigation conclude?
14 A That the -- Well, it -- Unfounded.
15 Q Okay. And did you notify Ms. Benson
16 of that outcome?
17 A I did.
18 Q Okay. Was it your understanding that
19 Ms. Benson reported this complaint, that she had
20 overheard from Ms. Lundvall, within about an
21 hour of hearing about it?
22 A I, I believe so.
23 Q She reported it pretty quickly after
24 she heard about it?
25 A Yeah. I can't be sure of the timing,

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1 but it --
2 Q Okay.
3 A Yeah.
4 Q Okay. Let's move now ahead four days,
5 and we'll move to the date you have, the April
6 26th, 21 -- 2021 warehouse fire, which is really
7 the subject that we're here on.
8 Can you tell me what station and
9 apparatus Ms. Benson was assigned to at the time
10 of that fire?
11 A She was on Truck 1, C shift --
12 Q Okay.
13 A -- operating as the acting captain.
14 Q And "acting captain" means what when
15 you go to a fire?
16 A Acting captain is when the captain is
17 off, the -- we utilize someone on the captain's
18 list to fill the, the role, and although they're
19 not officially promoted, they have the same
20 responsibilities and the same expectations of an
21 actual fire captain.
22 Q And do you know who was on
23 Ms. Benson's crew that day?
24 A I believe it was Fire Apparatus
25 Operator Matt Roberts and Probationary

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1 Firefighter Morgan Hurley.

2 Q So what's "probationary" mean in the
3 firefighter world?

4 A Probation -- We -- When our
5 firefighter recruits get out of the academy,
6 they do a six-month probation in which they're
7 assigned to the fire apparatus. That
8 probationary period allows us to ensure that,
9 that they're able to, to do the job without any
10 issues, and they -- They are able to gain
11 experience during that time to also make sure
12 that it's a career that they want to continue
13 in.

14 Q Okay. Morgan Hurley, as a
15 probationary firefighter, is she a good recruit?

16 A Yeah, she had -- she had very good
17 reports, and the crews seemed to think highly of
18 her.

19 Q And in your experience with her, did
20 you find her to be honest?

21 A Yes, I did.

22 Q Okay. And the other member of the
23 crew, FAO Matt Roberts -- And what's FAO stand
24 for again?

25 A Fire Apparatus Operator. So that is

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1 someone who drives and operates the apparatus.

2 Q And when you say "apparatus," what's
3 that mean in fire --

4 A That's our fire engine or a ladder
5 truck or something that we use for fire
6 suppression.

7 Q Okay. Is Matt Roberts, in your
8 opinion, a good firefighter?

9 A Yes, he is.

10 Q Describe his skills.

11 A Matt's been -- He, he came on the job
12 shortly after me. He's kind of a quiet guy.
13 Really, really knows his stuff. He's got a good
14 reputation on the department, and he's just --
15 He's just a solid employee. You know, no issues
16 with him.

17 Q In your experience with him, found him
18 to be honest?

19 A Yes. Yeah.

20 Q As acting captain, was Ms. Benson
21 responsible for her own crew's safety?

22 A Yes.

23 Q Okay. Ms. Benson makes her
24 accusations, again, against Captain Mahler in
25 regards to this fire. Can you tell me where he

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1 was stationed?

2 A He was stationed at Fire Station 8.
3 He's on Truck 8, C shift. So he's on, also, one
4 of the four ladder trucks. Station 8 is
5 probably -- I don't know how many miles from
6 Station 1, to the south.

7 Q Okay. And to the best of your
8 knowledge, does it sound accurate that
9 Ms. Benson and Captain Mahler had not worked
10 together permanently at the same station since
11 2016?

12 A That's correct, yeah.

13 Q Okay. Do you know who was on Captain
14 Mahler's crew the day of the warehouse fire?

15 A Let's see. I believe it was Fire
16 Apparatus Operator Love, Firefighters Borchers
17 and Dyer.

18 Q Okay. And are these all good
19 firefighters, in your opinion?

20 A Yeah, that's a good crew.

21 Q Okay. Were you present at the fire,
22 Chief?

23 A I was not.

24 Q And why weren't you?

25 A I typically try to go to incidents

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1 when I can, but that was -- During that day, I
2 had meetings. I was -- I was monitoring it.
3 Both of the battalion chiefs that were present
4 were giving me some updates, and what they had
5 reported is it was -- the fire was under
6 control. It was kind of a nuisance fire, and it
7 -- they were going to be there for quite a
8 while, but it wasn't spreading. It wasn't
9 anything to be overly concerned about.

10 Q So you didn't feel the need to go in
11 person?

12 A No.

13 Q Okay. But you've listened to the
14 audio of the fire radio traffic; correct?

15 A I have, yeah.

16 Q Okay.

17 MS. GUTTAU: And just for your
18 reference, Mr. Arbitrator, that is -- We
19 submitted the audio as our R12, and that was via
20 a link, and then we also have a transcript of it
21 as R13.

22 THE ARBITRATOR: Okay. I'm not
23 sure what you're talking about, so.

24 MS. GUTTAU: Yeah. Yep. Okay.
25 I'll give a little more description.

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1 Q (By Ms. Gutttau) So can you tell --
2 When you're talking about the radio audio, what
3 do you -- what's that referring to?

4 A Yeah, it's just a recording of all of
5 the radio traffic that occurred during that
6 incident.

7 Q Okay. Who all has radios on during an
8 incident -- during a fire?

9 A Every firefighter has a radio assigned
10 to them and -- so they all have the capability
11 of transmitting on the radio.

12 Q Okay. And so then that traffic of the
13 talking back and forth between the battalion
14 chief or whoever is, you know, at the fire,
15 that's all preserved in an audio?

16 A Yes, it is.

17 Q Okay.

18 A Yeah.

19 MS. GUTTAU: So that would be the
20 audio we're referring to.

21 THE ARBITRATOR: I have a
22 transcript of that somewhere?

23 MS. GUTTAU: Yes. That is --

24 THE ARBITRATOR: Where?

25 MS. GUTTAU: The transcript is

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1 R13.

2 THE ARBITRATOR: Okay. I don't
3 know where the Rs -- what the Rs are.

4 MS. GUTTAU: Oh, it's just

5 Respondent. I just meant -- We always mark them
6 as "Respondent." So it's R -- City Exhibit 13.

7 THE ARBITRATOR: Okay. That
8 would be --

9 MS. GUTTAU: Yep.

10 THE ARBITRATOR: Yeah.

11 MS. GUTTAU: Okay. Sorry.

12 THE ARBITRATOR: Now you can
13 (unintelligible).

14 MS. GUTTAU: All right.

15 THE ARBITRATOR: That confused
16 me.

17 MS. GUTTAU: I know. Sorry about
18 that. So, yeah, that --

19 THE ARBITRATOR: I found it.

20 MS. GUTTAU: That's our 13.

21 Q (By Ms. Gutttau) And you've listened
22 to the audio and read the transcript?

23 A Yes.

24 Q Okay. Were you familiar with the
25 scene where this fire occurred on April 26th?

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1 A I was not at the time, no.

2 Q Okay. Did you since -- Have you since
3 seen it?

4 A Yes, I have.

5 Q Could you describe it for Mr. Rutzick?

6 A It's kind of one of those industrial
7 park-type buildings. It's, it's, you know, a
8 fairly large building with a lot of garage
9 doors. People utilize them for different
10 things. You know, different businesses
11 typically use those because they have the
12 ability to park vehicles in and, and that sort
13 of thing.

14 Q Okay. Let's turn to City Exhibit R16.

15 A Okay.

16 MS. GUTTAU: So, sir, we're on
17 Exhibit 16.

18 Q (By Ms. Gutttau) And can you tell us,
19 just generally, what those appear to be to you?

20 A These are pictures of the building.

21 Q Okay. So 16 reflects the warehouse
22 that we're talking about in regards to the April
23 26th fire?

24 A Yes.

25 Q Okay.

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1 THE ARBITRATOR: Okay. I got it.

2 MS. GUTTAU: Okay. And for
3 brevity, instead of saying the date, can we
4 agree if we just refer to the warehouse fire we
5 all know what we're talking about? Is that
6 okay, John?

7 MR. CORRIGAN: It's fine with me.

8 MS. GUTTAU: Okay.

9 Q (By Ms. Gutttau) Is the warehouse --
10 was it still standing after the fire?

11 A Yeah, it was.

12 Q What, what kind of fire, I guess, was
13 it, to your knowledge?

14 A There was cardboard recycling, and I
15 believe there was -- in the center of the
16 warehouse was a compactor, and there was a fire
17 in the compactor.

18 Q And was it a lot of cardboard, to your
19 knowledge?

20 A Yes.

21 Q Okay. Why would both Captain Mahler
22 and Acting Captain Benson be called to this
23 fire?

24 A In every fire incident that is a
25 confirmed fire, we send two -- or, three

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1 engines, two truck companies, a medic unit, two
 2 battalion chiefs, and our air unit to the fire.
 3 They were both on truck companies that day.
 4 Q Okay. Who was the incident commander
 5 for the fire scene?
 6 A The overall incident commander was
 7 Acting Battalion Chief Curt Faust who was on
 8 Battalion 1, C shift that day.
 9 Q Can you spell his last name for the
 10 arbitrator?
 11 A F-A-U-S-T.
 12 Q Okay. What -- What's his --
 13 THE ARBITRATOR: What was his
 14 name?
 15 THE WITNESS: Curt Faust,
 16 F-A-U-S-T.
 17 THE ARBITRATOR: F?
 18 MR. CORRIGAN: F as in Frank.
 19 THE WITNESS: F as in Frank, A as
 20 in Adam, U as in union, S as in Sam, T as in
 21 Thomas.
 22 THE ARBITRATOR: Thank you.
 23 Faust. Okay.
 24 Q (By Ms. Guttai) And just, can you
 25 explain, what does an incident commander do at a

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1 organizing emergency incidents to ensure that
 2 everyone is safe and that there is no confusion
 3 in communications.
 4 Q Okay. Do you provide training to the
 5 Lincoln firefighters on ICS?
 6 A We do have training for ICS.
 7 Q We'll also hear a lot about tasks
 8 today. Can you describe what that means in the
 9 context of ICS.
 10 A Tasks are things that you need done on
 11 the scene. So that might be applying water to a
 12 fire. It might be ventilating. It might be
 13 doing search and rescue. There are -- There are
 14 many different things that have to be done. We
 15 call those "tasks."
 16 Q Okay. Talking about, then, some of
 17 those tasks that we'll hear a lot about in the
 18 next few days, what is "ventilation"?
 19 A "Ventilation" is basically opening up
 20 a structure to allow the heat and gases to be
 21 expelled from the structure.
 22 Q Okay. And what is --
 23 We'll also see reference to "extension."
 24 What is that?
 25 A "Extension" is determining if the fire

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1 fire?
 2 A The incident commander is kind of like
 3 the coach of the team. They, they make all the
 4 -- They make all the orders to the crews and
 5 ensure that there is organization at a fire
 6 incident.
 7 Q And so how is the incident commander,
 8 like, chosen or how is that person picked into
 9 that position in a fire?
 10 A So the first officer on scene always
 11 serves as the incident commander initially, and
 12 then, typically, as higher ranking personnel get
 13 there, they will end up taking command.
 14 So in a typical incident, a fire
 15 captain is most likely to be the initial
 16 incident commander, and then when the battalion
 17 chief arrives on scene, they will assume command
 18 once they get on scene and get a face-to-face
 19 briefing from the initial incident commander.
 20 Q Okay. Talking about incident command,
 21 we'll talk about a lot of references to ICS.
 22 What does that refer to?
 23 A Incident Command System.
 24 Q What is that?
 25 A It's an organiza -- It's a way of

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1 moved from the place of origin to a different
 2 location.
 3 Q And sometimes we'll hear reference to
 4 "fire attack." What is that?
 5 A "Fire attack" is utilizing a hose line
 6 and applying water to the fire.
 7 Q Okay. You will also hear -- We'll
 8 also talk a lot over the next couple of days
 9 about the term "group supervisor." What is a
 10 "group supervisor"?
 11 A A "group supervisor" is a designation
 12 of a supervisor when you have multiple companies
 13 working together. So you may have, say, two
 14 fire engines working together on fire attack,
 15 and in that case, you would have two
 16 supervisors, because they're company officers,
 17 and you can't have two people in charge of one
 18 team. So the group supervisor is designated to
 19 ensure that the incident commander is giving
 20 orders to one person and that one person is
 21 giving the orders to the other personnel.
 22 Q Okay. And who -- Like, who makes that
 23 -- Who makes that designation?
 24 A The incident commander makes that
 25 designation.

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1 Q And how do they specifically say it?
 2 Or how would it have to be designated?
 3 A They typically will say Engine's
 4 assigned fire attack, Engine 2 fire attack,
 5 Engine 1 -- or, Engine 2, you'll be working for
 6 Engine 1, and, and establish that captain as the
 7 group supervisor.
 8 Q Okay. And it has to be very clear?
 9 A Yes.
 10 Q Okay. If somebody is not designated
 11 as a group supervisor, do the crews still report
 12 to their own company?
 13 A Yes. We call those unit leaders.
 14 Q Is it ever implied or assumed that
 15 someone is a group supervisor without a specific
 16 designation?
 17 A No. The whole premises of the
 18 Incident Command System is to ensure that there
 19 are clear communications. So there is -- There
 20 is no implying in incident command.
 21 Q Okay. In the radio transmissions that
 22 you've listened to and read, at some point did
 23 Ms. Benson ask to assist with ventilation?
 24 A Yes.
 25 Q Okay. And was she told to assist with

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1 T8 ventilation?
 2 A Yes, and opening a door.
 3 Q Okay. That's what that means?
 4 A Yes.
 5 Q Okay. What does -- What does "assist
 6 with" mean?
 7 A "Assist with" is, essentially, help
 8 them.
 9 Q Okay. Does, does the term "assist
 10 with" mean that the person they're helping then
 11 becomes a group supervisor?
 12 A No.
 13 Q Okay. Did Ms. Benson arrive at the
 14 fire before Captain Mahler?
 15 A Yes, I believe so.
 16 Q Okay. And had she been in, in the
 17 warehouse, to your knowledge, before Captain
 18 Mahler had even entered?
 19 A Yes.
 20 Q And had come -- exited once before, as
 21 well?
 22 A I believe so.
 23 Q Okay. And that's all reflected in the
 24 transmission; right?
 25 A Correct.

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1 Q Okay. Did it seem suspect to you that
 2 Benson had her crew reenter the warehouse
 3 without full air packs?
 4 A Yes.
 5 Q If it's dangerous in the fire, what do
 6 you generally require or expect?
 7 A One of the things you want to do
 8 before entering a fire once you've gone out is
 9 check your air, and if your air is low, you
 10 should replace the, the air cylinder to ensure
 11 you've got enough air to, to continue
 12 operations.
 13 Q Okay. And it's your understanding
 14 that Ms. Benson, after the fire, alleged that
 15 Captain Mahler abandoned her and her crew in a
 16 dangerous warehouse fire?
 17 A Yes, that was the report we received.
 18 Q Okay. Did anybody raise any concerns
 19 to you immediately after the fire that there had
 20 been any safety violations or concerns regarding
 21 Captain Mahler and Ms. Benson?
 22 A Not immediately, no.
 23 Q Okay. When did that first come to
 24 your attention?
 25 A Several days later.

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1 Q Okay. Did anybody immediately after
 2 the fire mention that anybody had abandoned
 3 someone else in that warehouse fire?
 4 A No.
 5 Q Okay. Was there a safety officer at
 6 the warehouse fire?
 7 A There was.
 8 Q And who was that?
 9 A Battalion Chief Mike Smith.
 10 Q Okay. And what was his -- What's a
 11 safety officer do at a fire?
 12 A The safety officer is designated to --
 13 Because the incident commander is ultimately
 14 responsible for safety and they're usually in a
 15 stationary location where they can't move around
 16 and see things, they will designate a safety
 17 officer to do that for them. So the safety
 18 officer walks around, observes the conditions of
 19 the, the fire, the building, and the personnel
 20 and reports any safety concerns to the incident
 21 commander.
 22 Q Okay. Did Ms. -- Did Battalion Chief
 23 Smith report any safety concerns to you after
 24 the fire?
 25 A He did not.

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1 A I was under -- I mean, generally, it
2 appeared that she was displeased with the
3 communication process between her and Mahler at
4 the fire.

5 Q Okay. On page 1, at the -- one, two,
6 three, four -- fifth paragraph down, she says,
7 "At this point I realized that Mahler had
8 abandoned us in an unsafe environment."

9 Did you take that allegation seriously?

10 A Yes.

11 Q Okay. And on the second page of
12 Exhibit 15, at the very -- the last two
13 sentences she says, "It is especially dangerous
14 on a fire ground. His refusal to communicate
15 could have injured or killed me, FAO Roberts and
16 FF Recruit Hurley."

17 Did you take that as a very serious
18 accusation?

19 A Absolutely.

20 Q Did it seem suspect to you that she
21 waited about a week to report this?

22 A At the time I didn't think about it,
23 but over time, it seemed like for something as
24 drastic, that would be a long time.

25 Q Okay. And nonetheless, took her

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1 allegations seriously, and did you order an
2 investigation?

3 A I did.

4 Q Okay. At some point did you order
5 that Mahler be placed on leave pending
6 investigation?

7 A Yes. That -- I believe it wasn't
8 immediate. It was after she filed for the
9 injunction.

10 Q Okay. All right.

11 A I may be wrong on that, but that's my
12 recollection.

13 Q I think you're right. Why -- Or, who
14 investigated and why?

15 A I, again, had Administrative Officer
16 Witte, and I think Chief Smith might have
17 assisted her.

18 Q Okay. And she investigated
19 Ms. Benson's allegations?

20 A Yes.

21 Q What was the outcome of Ms. Witte's
22 investigation?

23 A She felt it was unfounded.

24 Q Okay. And what --

25 THE ARBITRATOR: And who did the

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1 -- I'm sorry, ma'am. Who did the investigation?

2 THE WITNESS: Aishah --
3 Administrative Officer Aishah Witte.

4 THE ARBITRATOR: Spell it.

5 THE WITNESS: W-I-T-T-E.

6 Q (By Ms. Gutttau) And she's the one who
7 had done other investigations for you that you
8 talked about earlier?

9 A Yes, she had done, I believe, all the
10 investigations up to that point.

11 Q Okay. Then if you want to turn to
12 Exhibit 44.

13 A (Witness complies.)

14 THE ARBITRATOR: 44?

15 MS. GUTTAU: Yes.

16 Q (By Ms. Gutttau) And just the first
17 two pages, do you know, was that Witte's letter
18 sending the results or outcome to Ms. Benson?

19 A Yes.

20 Q Okay. And the -- Reporting to her
21 that they -- she found the investigation did not
22 sustain a finding of retaliatory conduct?

23 A Yes.

24 Q Okay. And in the pages after the
25 first two page [sic], we've got "Investigation

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1 Summary." Is that Ms. Witte's investigation
2 summary, to your knowledge?

3 A I believe it is.

4 Q Okay. And she indicated -- Did you
5 learn that she had indicated that Captain Mahler
6 and Captain Benson were operating in a peer
7 capacity?

8 A Yes.

9 Q And Benson had been in the structure
10 and was familiar with how to make a safe exit
11 prior to Mahler even arriving?

12 A Yes.

13 Q After the conclusion of that
14 investigation, did you receive a grievance
15 regarding the investigation at some point?

16 A I did.

17 Q Okay. Let's turn to --

18 MS. GUTTAU: This would be
19 Exhibit 18, sir.

20 THE ARBITRATOR: Hold on a
21 minute. 18?

22 MS. GUTTAU: Yep, 18.

23 Q (By Ms. Gutttau) And what's Exhibit 18?

24 A That's the grievance filed by Amanda
25 Benson.

<p style="text-align: right;">Page 77</p> <p>1 Q Okay. And the Union signed, as well?</p> <p>2 A Yes.</p> <p>3 Q And what was the remedy that</p> <p>4 Ms. Benson and the Union were seeking?</p> <p>5 A It wanted the department to conduct a</p> <p>6 thorough and honest investigation of her</p> <p>7 complaint, and that we take action to punish or</p> <p>8 otherwise discipline employees who have been</p> <p>9 found to breach the rules of conduct with favor</p> <p>10 or bias and that Benson be made whole in all --</p> <p>11 in all respects, to include that she should be</p> <p>12 free from acts of retaliation in the workplace</p> <p>13 in violation of the City's own policies and</p> <p>14 rights of the grievant under the Collective</p> <p>15 Bargaining Agreement.</p> <p>16 Q Once she made -- or, submitted that</p> <p>17 grievance, what was the next step? Oh,</p> <p>18 actually, let me back up. I skipped a page. So</p> <p>19 that grievance was June 9th; is that correct?</p> <p>20 A Yes.</p> <p>21 Q Okay. A couple days later, did you</p> <p>22 learn that Ms. Benson had filed a motion in</p> <p>23 federal court regarding the warehouse fire?</p> <p>24 A Yes.</p> <p>25 Q And that was June 11th, 2021?</p>	<p style="text-align: right;">Page 78</p> <p>1 A I believe so.</p> <p>2 Q Let's turn to R46.</p> <p>3 THE ARBITRATOR: When did this</p> <p>4 happen?</p> <p>5 MS. GUTTAU: So this was June 11th.</p> <p>6 THE ARBITRATOR: And the lawsuit</p> <p>7 was filed when?</p> <p>8 MS. GUTTAU: So the lawsuit --</p> <p>9 This was a motion for preliminary injunction</p> <p>10 that was filed in the pending lawsuit that's</p> <p>11 been going since 2018.</p> <p>12 THE ARBITRATOR: And when was</p> <p>13 that lawsuit filed?</p> <p>14 MS. GUTTAU: So that's the</p> <p>15 lawsuit that has alleged that -- that he spoke</p> <p>16 about earlier that alleged that Captain Mahler</p> <p>17 and numerous other individuals -- I think there</p> <p>18 is eight individuals -- in the City of Lincoln</p> <p>19 are named. I think there is nine defendants.</p> <p>20 Regarding gender discrimination, harassment, and</p> <p>21 retaliation.</p> <p>22 THE ARBITRATOR: Okay. So she</p> <p>23 conducted a superseding complaint?</p> <p>24 MS. GUTTAU: Yes. So, yep, the</p> <p>25 Court allowed a fourth amended complaint, and</p>
<p style="text-align: right;">Page 79</p> <p>1 at, at this point on June 11th -- And this is</p> <p>2 one I e-mailed you, sir. So you'll get this in</p> <p>3 the mail tomorrow, but I e-mailed it to you.</p> <p>4 This is her motion for preliminary injunction</p> <p>5 that was filed with the Court.</p> <p>6 THE ARBITRATOR: Okay.</p> <p>7 MS. GUTTAU: Okay.</p> <p>8 Q (By Ms. Guttau) In her motion, what</p> <p>9 relief was she -- Let's see. Let me find this</p> <p>10 here.</p> <p>11 THE ARBITRATOR: Are we -- We're</p> <p>12 past the grievance now?</p> <p>13 MS. GUTTAU: Yeah. Yep, we'll</p> <p>14 kind of -- It kind of all overlapped, so we'll</p> <p>15 definitely come back to that, so.</p> <p>16 Q (By Ms. Guttau) So in her motion for</p> <p>17 injunction, they were filed two days apart.</p> <p>18 If you look at paragraph 8, can you read</p> <p>19 into the record what relief she was requesting.</p> <p>20 A (As Read) Plaintiff respectfully</p> <p>21 requests that the Court order the City of</p> <p>22 Lincoln to immediately initiate disciplinary</p> <p>23 proceedings against Mahler; enjoin Mahler from</p> <p>24 assignment/dispatch to any fire scene during the</p> <p>25 pendency of disciplinary proceedings; and</p>	<p style="text-align: right;">Page 80</p> <p>1 appoint an independent, third-party investigator</p> <p>2 to investigate Plaintiff's complaint against</p> <p>3 Mahler's actions at the recent warehouse fire.</p> <p>4 Q Okay. And then if you want to flip</p> <p>5 back to Exhibit 19.</p> <p>6 A (Witness complies.)</p> <p>7 THE ARBITRATOR: Hold on a</p> <p>8 second.</p> <p>9 MS. GUTTAU: Yep.</p> <p>10 THE ARBITRATOR: Okay. 19?</p> <p>11 MS. GUTTAU: Yep, 19.</p> <p>12 Q (By Ms. Guttau) What is Exhibit 19?</p> <p>13 A That's the affidavit of Amanda Benson</p> <p>14 in support of a motion for preliminary</p> <p>15 injunction.</p> <p>16 Q Okay. And to your knowledge, was this</p> <p>17 publicly filed?</p> <p>18 A Yes.</p> <p>19 Q And was it widely reported after it</p> <p>20 was filed?</p> <p>21 A It was.</p> <p>22 Q Okay. And in her -- Let's look at</p> <p>23 page 3 of Exhibit 19, paragraph 17.</p> <p>24 A (Witness complies.)</p> <p>25 Q Can you tell me what Ms. Benson stated</p>

<p style="text-align: right;">Page 81</p> <p>1 under oath regarding the fire and Captain 2 Mahler? 3 A "Mahler abandoned me, Roberts, and 4 Hurley in an IDLH (immediately dangerous to life 5 or health) with no direction." 6 Q Okay. And then if you want to look at 7 -- turn back to page 5. 8 A (Witness complies.) 9 THE ARBITRATOR: Where are you 10 now? 11 MS. GUTTAU: So now I'm on page 5 12 of the same Exhibit 19. 13 THE ARBITRATOR: Okay. 14 MS. GUTTAU: Okay. 15 Q (By Ms. Gutttau) And paragraph 33, 16 could you read that into the record. 17 A "Included as Exhibit 3 to Plaintiff's 18 Index of Evidence is a true and current copy of 19 an email I sent to Faust and Witte after Mahler 20 abandoned me in a dangerous warehouse fire." 21 Q And that's all part of her affidavit? 22 A Yes. 23 Q And Exhibit 3 of her index regarding 24 the e-mail to Faust and Witte, did you 25 understand that to be the same as Exhibit 15</p>	<p style="text-align: right;">Page 82</p> <p>1 that we talked about? 2 A That's correct. 3 Q Okay. And that was filed with the 4 Court? 5 A Yes. 6 Q All right. And you said her 7 allegations did make national news? 8 A Yeah, it was in fire journals, on 9 their news updates, and then I know Curt Varone, 10 who is -- who has a fire blog had it published 11 on there. 12 Q Okay. And if you want to look at 13 Exhibit 21. 14 MS. GUTTAU: This will be Exhibit 15 21 of the City's exhibits. 16 A (Witness complies.) Yep, that's 17 Firehouse magazine. 18 Q (By Ms. Gutttau) Okay. And there is 19 actually -- If you flip through, are those some 20 of the articles that discuss the fire? 21 A Yes. 22 Q Okay. And the first one's captioned 23 "Nebraska Fire Captain Abandoned Crew in Burned 24 Building"; correct? 25 A That's true, yeah. Correct.</p>
<p style="text-align: right;">Page 83</p> <p>1 Q Okay. What does that type of coverage 2 mean for LFR, for Lincoln Fire & Rescue? 3 A Well, it doesn't make us look good. 4 Q Uh-huh. 5 A And, again, it doesn't necessarily 6 help with recruiting efforts. 7 Q So at that point, did you place 8 Captain Mahler on leave after she filed her 9 motion for a preliminary injunction? 10 A I did. 11 Q And so this -- 12 MR. CORRIGAN: I'm sorry. 13 MS. GUTTAU: Uh-huh. 14 MR. CORRIGAN: At what point 15 specifically did you make that decision? 16 Because there is -- there is -- there is the 17 dates on these -- Did you do it after the dates 18 on these news reports? 19 MS. GUTTAU: No, I said after she 20 filed the motion for preliminary injunction on 21 June 11th. 22 MR. CORRIGAN: So when, when -- 23 Can you just say when you put him off of work? 24 THE WITNESS: I cannot remember 25 the exact date.</p>	<p style="text-align: right;">Page 84</p> <p>1 Q (By Ms. Gutttau) Was it sometime after 2 the motion and grievance both were filed? 3 A It was because one of the -- one of 4 the parts of the injunction was to ensure that 5 he wasn't going to respond with her to any 6 calls. 7 Q Okay. 8 A So that was my only choice at the 9 time, to ensure that they wouldn't respond 10 together. 11 Q Okay. When you placed him on leave at 12 that time, you didn't move him to a different 13 station. Actually, what did you do? 14 A I sent him home with pay. 15 Q For about how long? Do you recall? 16 A I don't recall. 17 Q Okay. More than a month? 18 A It, it was a long time. The 19 investigation took a long time. I would guess 20 it was more than a month. 21 Q Was that disruptive to his crew? 22 A Yes. 23 Q And did that leave citizens without 24 the benefit of his experienced responses? 25 A Yes.</p>

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1 THE ARBITRATOR: Did the Court
2 order the investigation?
3 MS. GUTTAU: So the Court did
4 not, but we undertook one anyway. So that was
5 actually the next step in my questions, so
6 you're way ahead of me.
7 THE ARBITRATOR: Okay.
8 Q (By Ms. Gutttau) After that motion had
9 been filed, at some point did you become aware
10 that the City hired somebody to investigate?
11 A Yes.
12 Q Okay. Do you know who the City hired
13 to conduct the investigation?
14 A They hired Torrey Gerdes.
15 Q Okay. And was that paid by LFR or by
16 City law?
17 A City law.
18 Q Did you have any involvement in that
19 investigation?
20 A I, I did answer some questions as far
21 as our policies, operations, and then I helped
22 facilitate person -- staffing to get personnel
23 to the, the meetings with her to, to conduct the
24 investigation.
25 Q Okay. In your discussions -- And who

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1 experience, did she appear to him fair and
2 unbiased?
3 MR. CORRIGAN: Okay. And then
4 I'm objecting on the basis of relevance, given
5 the fact that this is a lawyer who the City
6 hired to provide an investigation -- perform the
7 investigation, yet, the City has not produced
8 this person as a witness and will not allow us
9 to review the underlying documentation with
10 respect to the investigation she conducted. So
11 whether she's -- His impressions of her are
12 irrelevant.
13 MS. GUTTAU: We've provided
14 everything from her investigation that we have.
15 THE ARBITRATOR: What are you --
16 What are you asking for, John?
17 MR. CORRIGAN: Well, the question --
18 THE ARBITRATOR: What don't you
19 have?
20 MR. CORRIGAN: All of the
21 underlying statements.
22 THE ARBITRATOR:
23 (Unintelligible.)
24 THE COURT REPORTER: I need -- I
25 -- I'm sorry, sir, I can't understand you. "Are

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1 was the investigator?
2 A Torrey Gerdes.
3 Q Okay. And do you know who she is or
4 with?
5 A She's an attorney. I can't remember
6 the law firm.
7 Q Is it Baylor Evnen?
8 A Yes, it is.
9 Q Okay. Did you know her at all before
10 this investigation?
11 A I had never heard of her.
12 Q Okay. In your discussions with her,
13 to you does she appear fair and unbiased?
14 A Yes.
15 MR. CORRIGAN: Objection.
16 Relevance.
17 A Yes.
18 MR. CORRIGAN: A, no --
19 MS. GUTTAU: Yes.
20 MR. CORRIGAN: -- there is an
21 objection to the relevance.
22 MS. GUTTAU: He has to rule.
23 MR. CORRIGAN: This is a lawyer
24 that is not --
25 MS. GUTTAU: I asked: In his

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1 you moving forward?" What did you just say?
2 THE ARBITRATOR: You can't
3 understand me?
4 THE COURT REPORTER: There you
5 go. Now I can.
6 THE ARBITRATOR: Sorry. I just
7 asked John if he could move forward so I could
8 see him.
9 MR. CORRIGAN: Oh, move forward.
10 THE ARBITRATOR: It would make it
11 easier for me to understand what he's saying.
12 MR. CORRIGAN: Okay.
13 THE ARBITRATOR: I'm half deaf
14 anyway, and then when I can't see you, I can't
15 fully hear.
16 MR. CORRIGAN: Well, I apologize
17 for the video hookup, but the -- Essentially,
18 our objection is the City's asking the fire
19 chief as to his judgment about the credibility
20 of the lawyer that they hired to conduct an
21 investigation, and pursuant to the arbitrator's
22 previous rulings in the case, we --
23 THE ARBITRATOR: Was that the --
24 Hold on -- Was that the question, whether --
25 MS. GUTTAU: No, my question was

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1 just --
2 THE ARBITRATOR: In regards to
3 her veracity?
4 MR. CORRIGAN: Yes, that's
5 exactly what she was asking.
6 THE ARBITRATOR: Because if
7 that's what you're asking him, you can't.
8 MS. GUTTAU: I'll withdraw it.
9 That's fine. That's fine. I just wanted to --
10 THE ARBITRATOR: He has no way to
11 know that.
12 MS. GUTTAU: Okay.
13 Q (By Ms. Guttan) In your --
14 THE ARBITRATOR: Can you --
15 MS. GUTTAU: Okay.
16 Q (By Ms. Guttan) In your experience,
17 had -- to your knowledge, had she ever
18 represented the fire -- Lincoln fire department
19 before?
20 A No.
21 Q Okay. At this time the motion for
22 injunction's still pending; correct?
23 A Correct.
24 Q Okay. And I want to turn to --
25 MS. GUTTAU: This would be

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1 Exhibit 2, sir.
2 THE ARBITRATOR: 2.
3 MR. CORRIGAN: Let's just clarify
4 that when you said "at this time," that meant
5 when she was hired, so it's not pending today;
6 right?
7 MS. GUTTAU: I'm sorry. Oh, no,
8 at this point, yep. I gotcha. I gotcha. Yep.
9 So I should say -- John had a good point to
10 clarify.
11 Q (By Ms. Guttan) I should have asked:
12 At this point in time that we're discussing,
13 after the investigator had been hired, at some
14 point did you submit a declaration to federal
15 court?
16 A I did.
17 Q Okay. Can you turn to Exhibit 2, sir?
18 A (Witness complies.)
19 Q What is Exhibit 2?
20 A That's my declaration.
21 THE ARBITRATOR: A declaration?
22 MS. GUTTAU: Yes. This is the
23 chief's declaration.
24 THE ARBITRATOR: To what?
25 MS. GUTTAU: He's gonna testify

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1 to it. I just -- These were part of the court
2 filings, and so it's part of what he made his
3 decision on. The federal court made a decision
4 based on these, and we've included that order.
5 So I'll have him testify to all
6 of these things because I know you want to hear
7 firsthand from the witnesses.
8 THE ARBITRATOR: Okay.
9 MS. GUTTAU: Okay.
10 Q (By Ms. Guttan) Can you tell us, in
11 -- As reflected in the declaration, at some
12 point did you reach a conclusion as to whether,
13 after you listened to the radio transmission --
14 and I'm looking at paragraph 7 just for
15 reference -- did you reach a conclusion that
16 Captain Mahler and Acting Captain Benson were
17 operating in a peer capacity?
18 A I did, and that was based on two
19 things. It was based on what I heard from the
20 fire ground radio transmissions and what the
21 incident commander had e-mailed me as to his
22 intentions, in an e-mail.
23 Q Okay. And turning to the next page --
24 A (Witness complies.)
25 Q -- you talk about Acting Captain

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1 Benson in Paragraph 9 as the supervisor had the
2 same expectations and rank as all other
3 captains. Can you describe what you mean by
4 that. What's that mean?
5 A Our acting captains are considered,
6 while they're acting and they're not fully
7 promoted, they are still -- they still carry the
8 same expectation as a captain would.
9 Q Okay. And in Paragraph 10, you talk
10 about your conclusion regarding group
11 supervisor. Can you tell -- describe that for
12 the arbitrator.
13 A Again, there was -- there was never
14 any sort of designation of anyone being a
15 ventilation group supervisor during that
16 incident, and it was further clarified by the
17 incident commander that it was not his intention
18 to have a group supervisor or he would have
19 designated one.
20 Q So if there is not a group supervisor,
21 who do the captains report to?
22 A To their immediate captain, acting
23 captain, which is considered a unit leader at
24 that time.
25 Q And then they report to the incident

<p style="text-align: right;">Page 97</p> <p>1 believe that Captain Mahler abandoned them in an 2 IDLH environment? 3 A No one felt that way. 4 Q Did any of them convey any concerns 5 about their safety or the safety of their crew 6 in the warehouse fire? 7 A No. 8 Q And they all submitted declarations to 9 federal court to that effect, didn't they? 10 A I believe they did. 11 MS. GUTTAU: And, again, sir, 12 those other declarations are Exhibits 3 through 13 9. We will have those individuals all testify, 14 but we've included them because that was what 15 was before the Court. 16 Q (By Ms. Gutttau) At some point did you 17 learn about a ruling by the federal court on 18 Ms. Benson's motion for a preliminary injunction 19 relating to the warehouse fire? 20 A Yes, I did. 21 Q In general terms, what did you 22 understand that ruling to be? 23 A I believe they denied it. 24 Q Okay. And if you want to turn to -- 25 MS. GUTTAU: This is Exhibit 1,</p>	<p style="text-align: right;">Page 98</p> <p>1 City, Respondent, Exhibit 1. 2 A (Witness complies.) 3 Q (By Ms. Gutttau) Is Exhibit 1 the 4 memorandum and order by the Court? 5 A Yes. 6 Q Okay. Did the Court's findings raise 7 some concerns for you? 8 A Yes, it did. 9 Q Let's turn to page 12 of Exhibit 1. 10 A (Witness complies.) 11 Q So on page 12 of Exhibit 1, under the 12 equities, the Court talks about the evidence in 13 the second sentence. Do you see that? 14 A Yes. 15 Q Okay. Could you read that -- those 16 two sentences into the record. 17 A "The evidence show" -- 18 THE ARBITRATOR: Where are you? 19 Hold on. Say it again. 20 MS. GUTTAU: So we're on 21 Exhibit 1, page 12. 22 THE ARBITRATOR: Okay. Hold on. 23 Go ahead. 24 MS. GUTTAU: Okay. 25 Q (By Ms. Gutttau) And what did the --</p>
<p style="text-align: right;">Page 99</p> <p>1 What did the judge write starting at the second 2 sentence of the first full paragraph? 3 A (As read) The evidence shows that, 4 with the exception of the plaintiff, no person 5 on Mahler's and Plaintiff's crew, nor the 6 incident commander of the safe -- or the safety 7 officer believed that Mahler was a ventilation 8 group supervisor, that Mahler abandoned 9 Plaintiff and her crew in a dangerous situation, 10 or that Mahler was duty bound to direct or 11 supervise Plaintiff and her crew. 12 Q Okay. Thank you. Did that cause you 13 concern? 14 A Yes. 15 Q Why? 16 A Because that was directly opposite of 17 what was reported. 18 Q Reported by who? 19 A By Ms. Benson. 20 Q Okay. After the order came down, did 21 you, at some point, receive an investigation 22 report by Attorney Gerdes, that we referred to 23 earlier? 24 A I did. 25 Q Okay. And Exhibit -- Let's turn to --</p>	<p style="text-align: right;">Page 100</p> <p>1 MS. GUTTAU: This will be Exhibit 2 -- One second. Sorry. Oh, sorry, Exhibit 11. 3 A (Witness complies.) 4 THE ARBITRATOR: Okay. 5 Q (By Ms. Gutttau) And what was 6 Exhibit 11? 7 A That was the investigation report. 8 Q Okay. And did you review that report? 9 A Yes. 10 Q Okay. And what was your understanding 11 of her findings? 12 A Her findings were that the -- that 13 Mahler was not designated as a group supervisor, 14 that he did not abandon anyone in a building, 15 and -- Let's see. I'm trying to think what all 16 the findings were. 17 MR. CORRIGAN: I, I would object 18 to his conclusions without referencing her exact 19 findings. 20 MS. GUTTAU: We can reference her 21 findings. 22 Q (By Ms. Gutttau) If you want to turn 23 to page -- Conclusions start on page 34, and 24 just for user reference, there is, maybe, 25 headings.</p>

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1 A Okay.

2 Q Five headings.

3 A Yep. Number one. Shawn Mahler was
4 not assigned as a ventilation group supervisor
5 during the April 26th, 2021, fire incident.

6 Number 2. Shawn Mahler had no duty to
7 supervise Truck 1 or communicate in the role of
8 group supervisor with Truck 1's crew after
9 Truck 1 was assigned to assist with ventilation,
10 getting one of those doors open.

11 Number 3. Shawn Mahler did not
12 abandon Truck 1 in an IDLH environment after
13 Truck 1 was assigned to assist with ventilation,
14 getting one of the doors open.

15 Number 4. Captain Shawn Mahler did
16 not have an obligation to call a Mayday
17 regardless of whether he knew where Truck 1 was
18 physically located.

19 And Number 5. Shawn Mahler did not
20 fail to follow reasonable communication protocol
21 by his communication with Acting Captain Amanda
22 Benson after incident command assigned Truck 1
23 to replace Truck 8.

24 Q In your review of her report, did you
25 -- did you find it accurately reflected Lincoln

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1 Fire & Rescue protocol?

2 A Yes.

3 Q Okay. At this point did you respond
4 -- or, after you received the investigation, the
5 Court order, did you respond to Ms. Benson's
6 June 9th, 2021, grievance that we referred to
7 earlier, which was Exhibit -- too many numbers
8 here. Exhibit 18 was her grievance. Did you
9 respond to that grievance at this point? And
10 I'll turn to Exhibit 24.

11 A Yes. Exhibit 24 is my response.

12 Q Okay. And what, what did you decide
13 in regard to her grievance?

14 A I denied her grievance.

15 Q Okay. Even after this grievance was
16 denied, did Ms. Benson, to your knowledge,
17 continue to make the allegations that Mahler had
18 abandoned her?

19 A I believe so.

20 Q Okay. Was there at some point that
21 you were contacted by City council with concerns
22 about her allegations?

23 A Yes. I had a City councilman contact
24 me.

25 Q Okay. Tell me about that.

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1 A A member of the community had met with
2 Ms. Benson, and Ms. Benson provided a number of
3 documents regarding her situation, and this
4 individual contacted a City councilman, who
5 contacted me and, and wanted to have a meeting
6 to go over these.

7 Q At some point did you consider
8 disciplinary action against Ms. Benson?

9 A I did.

10 Q Why?

11 A Because it, it vi -- This, this claim
12 was inconsistent with the information in the
13 investigation, and it violated a number of
14 policies, and, certainly, I felt harmed the
15 reputation of Lincoln Fire & Rescue.

16 Q Did you listen to her -- the interview
17 by Torrey Gerdes of Ms. Benson?

18 A I did.

19 Q Okay.

20 MS. GUTTAU: And just for
21 reference, sir, that's Exhibit 22 of the City's
22 exhibits, which is just an audio file.

23 Q (By Ms. Guttau) And we won't go into
24 that in detail because about how long is that
25 audio interview?

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1 A It was greater than ten hours.

2 Q Okay. When you listened to that
3 audio, what was your impression?

4 A At this point I don't even remember
5 for sure. It was -- It was long.

6 Q Okay.

7 THE ARBITRATOR: What are you
8 talking about? I missed that.

9 MS. GUTTAU: Sorry. Talking
10 about the audio file that we sent, Exhibit 22.
11 That's the recording of Ms. Gerdes' interview of
12 Grievant Benson.

13 THE ARBITRATOR: Okay.

14 Q (By Ms. Guttau) Did -- When you
15 listened to her interview by Gerdes, did it
16 match what you -- had been reported to you
17 earlier?

18 A No, it did not.

19 Q In what ways?

20 A If I remember right, at that point,
21 she had -- she had made statements that the
22 conditions weren't as bad as they were
23 originally portrayed to be, and that -- I don't
24 believe at that point she felt abandoned, but
25 she was mostly upset with what she felt was his

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1 failure to communicate with her.
 2 Q And her story was still different in
 3 that reporting than everybody else's that you
 4 had heard from the scene?
 5 A Yes, there were some inconsistencies.
 6 Q Okay. At some point did you issue a
 7 Notice of Pre-Disciplinary Meeting?
 8 A Yes, I did.
 9 Q Okay. Let's turn to --
 10 MS. GUTTAU: This will be Exhibit
 11 R25.
 12 Q (By Ms. Gutttau) What is R25?
 13 A That is a Notice of Pre-Disciplinary
 14 Meeting.
 15 Q Okay. And is this customarily sent
 16 before discipline?
 17 A Yes, it is.
 18 Q Okay. And did you inform Ms. Benson
 19 of the allegations against her?
 20 A Yes.
 21 Q Can you read the first sentence under
 22 the nature of the allegations against her.
 23 A "The nature of the allegations against
 24 you is that you've made serious false
 25 allegations against a fellow firefighter.

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1 A That's correct.
 2 Q Before the pre-disciplinary hearing,
 3 what were your intentions regarding her
 4 employment? So what I'm asking is: Did you
 5 intend to fire her?
 6 A No. When we go into the
 7 pre-disciplinary hearing, the desire is to,
 8 hear the person's perspective of what happened
 9 and, and provide clarity to the situation.
 10 Q Okay. Did you then have a
 11 pre-disciplinary hearing?
 12 A We did.
 13 Q Okay. Let's turn to Exhibit --
 14 MS. GUTTAU: This will be Exhibit
 15 R27.
 16 THE ARBITRATOR: Hold on one
 17 second. So ask -- Could you re-ask that
 18 question again about firing her? What did you
 19 ask him regarding --
 20 MS. GUTTAU: Yep. Yeah. Sure.
 21 Before the hearing, what were
 22 your intentions regarding her employment?
 23 Q (By Ms. Gutttau) And what I was asking
 24 is: Did you intend to fire her?
 25 A I didn't have any indication in my

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1 Specifically, you stated that you and your crew
 2 were abandoned in a dangerous burning warehouse
 3 by Captain Shawn Mahler with zero visibility at
 4 the April 26th, 2021, fire scene. As a result
 5 of your accusation, Captain Mahler had to be
 6 placed on paid leave, and the City was without
 7 the benefit of his services as an experienced
 8 firefighter. However, none of the evidence, the
 9 audio recording/transcript, witness statements,
 10 the findings of Ms. Gerdes, or the findings of
 11 Judge Kopf lend any credibility to your
 12 statements."
 13 Q Okay. Do you take allegations -- the
 14 allegation that she made against Captain Mahler
 15 -- Let me strike that.
 16 A firefighter like Captain Mahler, to
 17 your knowledge, has he devoted his life to
 18 public service?
 19 A Yes.
 20 Q Can you think of any more serious
 21 accusation to make against a fellow firefighter?
 22 A That's a pretty serious allegation.
 23 Q Okay. All right. In the letter, you
 24 also explained the evidence supporting your
 25 allegation, correct, on page 2?

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1 mind. The pre-disciplinary hearing is designed
 2 to allow the party to give their side of the
 3 story.
 4 So I didn't know what the discipline
 5 outcome would be at that point.
 6 THE ARBITRATOR: All right.
 7 Q (By Ms. Gutttau) Did you --
 8 THE ARBITRATOR: Go ahead.
 9 MS. GUTTAU: Okay.
 10 Q (By Ms. Gutttau) Did you then have the
 11 pre-disciplinary meeting?
 12 A Yes, we did.
 13 Q Okay. And let's turn to Exhibit 27.
 14 What is Exhibit 27?
 15 A I believe it's the transcript of the
 16 pre-disciplinary hearing.
 17 MS. GUTTAU: And, Mr. Rutzick,
 18 just so you know, Exhibit 26 is the audio of the
 19 pre-disciplinary hearing, and then Exhibit 27 is
 20 the transcript.
 21 Q (By Ms. Gutttau) Okay. What date was
 22 that pre-disciplinary meeting held upon?
 23 A October 12th, 2021.
 24 Q And who was present at that?
 25 A I know for, for the City I believe it

<p style="text-align: right;">Page 109</p> <p>1 was myself, Administrative Officer Witte, Chief 2 Smith, Daisy Brayton from HR. I'm not sure -- 3 Let's see here. Ms. -- On the Union's side, I 4 know Ms. Benson, John Corrigan, Adam Schunk, 5 and I believe they had Ed Hadfield, who was -- 6 who was their expert witness. It looks like 7 Battalion Chief Majors was also present and Ryan 8 Moser from the Union.</p> <p>9 Q Okay. And generally, did anything 10 stick out in your mind? Well, first of all -- 11 Strike that.</p> <p>12 What -- How was the hearing conducted? 13 What happens?</p> <p>14 A During the hearing, we asked questions 15 to just understand the situation better. I 16 guess I don't know specifically what else.</p> <p>17 Q Everybody -- Is Ms. Benson given an 18 opportunity to, to speak and provide --</p> <p>19 A Yes.</p> <p>20 Q -- her side?</p> <p>21 A Yes.</p> <p>22 Q Okay. What was your general 23 impression after the hearing regarding 24 Ms. Benson's testimony?</p> <p>25 A I, I didn't see a time where -- her</p>	<p style="text-align: right;">Page 110</p> <p>1 claims of abandonment, and it didn't appear that 2 the, the situation was as dire as, as it had 3 been reported in the media and in the 4 injunction.</p> <p>5 Q And -- Sorry. One moment.</p> <p>6 Did you believe that there had been some 7 inconsistencies?</p> <p>8 A I did.</p> <p>9 Q Okay. Do you recall any of those?</p> <p>10 A At this point, I, I don't recall 11 specific inconsistencies, other than there was 12 -- there was definitely not -- no one was 13 abandoned, and the -- I, I remember that early 14 on it was said that we needed to utilize a 15 thermal imaging camera to find our way around 16 and everything, and that was inconsistent with 17 all the witness statements. So there were -- 18 There were several inconsistencies that were a 19 concern.</p> <p>20 Q If you want to turn to page 10.</p> <p>21 A (Witness complies.)</p> <p>22 Q Can you describe what you're asking 23 about the low air alarm? What does that mean?</p> <p>24 A Yeah, I was -- I was asking if, if it 25 was such a dangerous environment, why she felt</p>
<p style="text-align: right;">Page 111</p> <p>1 comfortable allowing Fire Apparatus Operator 2 Roberts --</p> <p>3 THE WITNESS: Something just 4 happened here.</p> <p>5 THE COURT REPORTER: Wait a 6 second. We're buffering.</p> <p>7 THE ARBITRATOR: I'm here.</p> <p>8 MS. GUTTAU: Can you hear us okay 9 again?</p> <p>10 THE ARBITRATOR: I'm sorry. 11 What?</p> <p>12 MS. GUTTAU: Can you hear us?</p> <p>13 THE ARBITRATOR: Yeah, I can hear 14 you. Yeah, you're good. You're all good.</p> <p>15 MS. GUTTAU: Okay. We had a 16 moment there.</p> <p>17 MR. CORRIGAN: If you want to go 18 back to where he left off.</p> <p>19 (The requested portion of the 20 record was read back.)</p> <p>21 A Yeah. So why would she have been 22 comfortable allowing Fire Apparatus Operator 23 Roberts to enter the building with, with over a 24 half depleted cylinder of air.</p> <p>25 Q (By Ms. Guttau) And did her</p>	<p style="text-align: right;">Page 112</p> <p>1 explanation make sense to you?</p> <p>2 A No.</p> <p>3 Q Okay. On page 9 -- Let's back up a 4 page.</p> <p>5 A (Witness complies.)</p> <p>6 Q -- on line 16, you asked: "If you 7 felt abandoned in an unsafe environment, why 8 didn't you take action, like attempting radio 9 contact and reporting it?"</p> <p>10 And she responded; correct?</p> <p>11 A Yes.</p> <p>12 Q And did her explanation make sense to 13 you there?</p> <p>14 A No.</p> <p>15 Q Okay. Looking at page -- Looking at 16 page 12 of Exhibit --</p> <p>17 THE ARBITRATOR: Page 12?</p> <p>18 MS. GUTTAU: Page 12, yep.</p> <p>19 THE ARBITRATOR: Okay.</p> <p>20 Q (By Ms. Guttau) It looks like you 21 asked her about the incident report. Was that 22 the Prime report? And this is at line 20.</p> <p>23 A Yes, that's the Prime report.</p> <p>24 Q Okay. And why were you asking her 25 about that?</p>

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1 A Because in the -- in the report, if
2 she was assigned to work under another company,
3 under a group supervisor, that should have been
4 notated in the report. That's pretty
5 significant.

6 Q And did her explanation make sense
7 there to you?

8 A No.

9 Q Okay. Later on in the hearing, did
10 you -- did Ms. Benson talk about believing that
11 Torrey Gerdes had manipulated the record?

12 A Yes.

13 Q Okay. Did that cause you concern when
14 she's expressing that about Ms. Gerdes?

15 A Yes.

16 Q And why?

17 A I found it just far-fetched that the,
18 the recording would be manipulated.

19 Q Did she also place blame at the
20 hearing on her -- Battalion Chief Faust?

21 A I, I don't remember specifically.

22 Q Okay. And we'll get to the letter, so
23 that's fine.

24 What did you conclude after the hearing?

25 A I concluded that the initial claims

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1 were highly exaggerated and were inconsistent
2 with what the investigation report found.

3 Q Okay. If she now says she was --

4 THE ARBITRATOR: I have a
5 question for you, Chief.

6 THE WITNESS: Yes, sir.

7 THE ARBITRATOR: On page 13 she
8 indicated that she talked to this Curt Faust,
9 who she said was like a mentor to her, and he
10 informed her, according to her, that it was way
11 more serious than she was telling him, and then
12 she should have reported it because of the
13 seriousness of the issue.

14 Did you talk to Curt Faust, and
15 is that somewhere here in the record?

16 THE WITNESS: I believe I heard
17 from Faust on May -- The morning of May 5th, I
18 believe, was when he approached me and said,
19 Hey, there is -- there is a potential problem
20 here.

21 THE ARBITRATOR: Did you talk to
22 him, though, after, after she, you know, made
23 this statement during your disciplinary hearing
24 to verify whether or not what she said here was
25 true or not? Do you see what I'm getting at?

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1 On the bottom of page 13.

2 THE WITNESS: Yes.

3 THE ARBITRATOR: "He was the one
4 that directed me to escalate it and informed me
5 about the seriousness of the issue."

6 THE WITNESS: Yes. And he did --
7 I didn't ask him specifically if he was the one
8 that escalated -- or told, told her to escalate
9 it. I believe that that was probably accurate.

10 Q (By Ms. Guttau) And you would expect
11 him to escalate it if he understand -- if he
12 believed her accusations and took them
13 seriously?

14 A Yes. I mean, that would be the
15 expectation of any of our personnel. If there
16 is a safety issue, then they would bring it to
17 me, and he did do that. And I'm not a hundred
18 percent sure, but I think that was the morning
19 of May 5th.

20 Q Okay. If --

21 THE ARBITRATOR: I'm not sure
22 what you're telling me.

23 MS. GUTTAU: So the ques --

24 MR. CORRIGAN: Don't cut him off.

25 MS. GUTTAU: Oh.

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1 MR. CORRIGAN: Sorry.

2 THE ARBITRATOR: I'm still
3 talking.

4 MS. GUTTAU: Okay.

5 THE ARBITRATOR: Did you talk to
6 Mr. Faust or Officer Faust or Firefighter Faust
7 in regard to what she told you, in regard to
8 that on the bottom of page 13?

9 THE WITNESS: The only
10 conversation I had with him was when he reported
11 this to me. I -- He and I did not talk about
12 that he directed her to escalate it or whatever
13 it says here.

14 THE ARBITRATOR: All right. I
15 guess my question is: Did you specifically ask
16 him that?

17 THE WITNESS: I did not.

18 THE ARBITRATOR: Okay. That's
19 all I wanted to know. Continue on, Heidi.

20 MS. GUTTAU: Sure.

21 Q (By Ms. Guttau) Along those lines,
22 first of all, in regard to Faust, if -- He is
23 her supervisor; correct?

24 A Correct.

25 Q If she's reporting that another

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1 Battalion Chief Faust had instructed Ms. Benson
2 to lie about what happened at the fire?

3 A No.

4 Q Okay. And you would expect him to
5 take her at her word?

6 A Yes.

7 Q Okay. So then let's go through your
8 letter, and starting on page 2 -- or, I'm sorry,
9 on page 1, at the bottom two paragraphs, could
10 you describe to the Arbitrator, you know, what
11 your conclusion was as far as your findings
12 after the hearing and reviewing everything.

13 A I found she made serious false
14 allegations against a fellow firefighter --
15 let's see -- that she had been abandoned in the
16 fire.

17 Q Okay. And had she also alleged that
18 his behavior could have injured or killed her
19 and her crew?

20 A Yes.

21 Q Okay. At the top of page 2, you
22 indicated that "none of the evidence lent
23 credibility to your statements." Is that what
24 you stated?

25 A Yes.

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1 that she then attempted to blame others or
2 discredit others with no basis. At the top of
3 page 3, can you describe what you're referring
4 to there.

5 A She had -- She had said that Curt
6 Faust forced her to report Captain Mahler.

7 Q But he did not force her to make a
8 false report, did he?

9 A No.

10 Q Battalion Chief Smith, can you tell us
11 what you concluded in regard to information from
12 him.

13 A He had -- He had reported that he made
14 contact at the fire scene and, and asked if
15 everything was all right, and at that point she,
16 she had said yes at the fire scene, and then she
17 claimed that he had never talked to her.

18 Q And then you also mentioned you felt
19 that she tried to divert attention away from her
20 accusation -- or, divert attention from the real
21 issue by making serious accusations about
22 Ms. Gerdes; is that correct?

23 A Yes. She had stated that she felt
24 Ms. Gerdes had altered the recordings of the
25 interview.

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1 Q And then you give some reasons why.

2 Could you describe those reasons, you've got, I
3 think, your first, second, third below that?

4 A Sure. That -- The first thing is that
5 the audio, there was no transmissions in any way
6 and no reports of her being in any sort of
7 danger or being abandoned or her crew
8 potentially being killed. The, the crew had re
9 -- reported that the conditions weren't what she
10 had claimed, that they never felt like they were
11 in danger, and the evidence just did not show
12 the claims.

13 Q And did you also rely upon the
14 investigation report and Judge Kopf's order?

15 A I did.

16 Q Okay.

17 MR. CORRIGAN: When you say
18 "investigation report," can you clarify that.

19 MS. GUTTAU: Yep.

20 Q (By Ms. Guttiau) The Gerdes
21 investigation report?

22 A Yes, the Gerdes investigation report,
23 Judge Kopf's findings, as well as our internal
24 investigation. All three were considered.

25 Q Okay. At the bottom you said you felt

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1 Q Okay. And what did you conclude in
2 that regard in the next paragraph? It starts
3 with "In short." Could you read that into the
4 record?

5 A (As read) In short, your attempt to
6 point fingers at others does not change the fact
7 that you -- that it was you who made the false
8 allegation of being abandoned in an IDLH
9 environment that you could have killed you and
10 your crew.

11 Q That you stated?

12 A Or, "that you stated could have killed
13 you and your crew."

14 Q It's tiny print.

15 In the next half of the page to the top
16 of the next page, you talk about various
17 policies and codes that you believe were
18 violated?

19 A Yes.

20 Q I'd like to go through those real
21 briefly.

22 A Okay.

23 Q Let's see here. First, you state that
24 she had violated, in number one, Lincoln Fire &
25 Rescue Management Policy, Professional Code of

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1 Q And F, how did you believe she had
2 been either guilty of insubordination or conduct
3 unbecoming?

4 A I felt reporting an incident that was
5 inconsistent is conduct unbecoming.
6 Insubordination, I had a couple of concerns
7 about how she had conducted herself on the
8 incident.

9 Q Is it conduct unbecoming to make false
10 accusations, in your opinion?

11 A Certainly, yeah.

12 Q You also point, on the next page, to
13 subparagraph I of the Collective Bargaining
14 Agreement. Can you tell me what that is, in a
15 nutshell.

16 A (As Read) Violation of any lawful or
17 reasonable regulation made or given by the
18 employee's superior, where such violation or
19 failure to obey amounts to an act of
20 insubordination or serious breach of proper
21 discipline; or results, or might responsibly
22 [sic] have been expected to result in loss or
23 injury to the City, to (unintelligible) of the
24 City or to the public.

25 Q In what ways did you believe she

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1 violated that?

2 A I think allowing, allowing a
3 firefighter to go in with a lack of air -- I
4 don't think that's funny -- but a lack of air or
5 not following -- not following policy.

6 Q Okay.

7 MR. CORRIGAN: I'm sorry, Dave,
8 but you didn't put that in the letter, so it's a
9 little surprising to me --

10 MS. GUTTAU: Well, let me tie it
11 in.

12 MR. CORRIGAN: -- that you're
13 saying that here.

14 MS. GUTTAU: Let me tie it in.

15 Q (By Ms. Guttau) So is it surprising
16 that she let a firefighter go in with a lack of
17 air at the same time she's claiming that it's
18 dangerous and risking her life?

19 A Absolutely.

20 Q Okay. (As Read) Commission of acts
21 or omissions unbecoming an incumbent of the
22 particular office or position held, which render
23 reprimand, suspension, demotion, or dismissal
24 necessary or desirable for the economical or
25 efficient conduct of the business of the City or

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1 the best interest of the government.

2 In what ways did you believe that had
3 been violated?

4 A Well, again, reporting things that
5 didn't happen, not following policy. Same, same
6 as before.

7 Q Okay. And did you -- K is willful
8 violation. Did you believe that Ms. Benson was
9 willfully lying about Captain Mahler abandoning
10 her in a warehouse?

11 A Yes.

12 Q Okay. Is -- To your knowledge, is
13 Captain Mahler also a union member?

14 A He is.

15 Q Okay. This is a serious accusation to
16 make against a firefighter or a union member;
17 right?

18 A That's correct.

19 Q Was the decision to terminate solely
20 your decision?

21 A Yes.

22 Q Okay. Why did you decide on --

23 THE ARBITRATOR: Solely your --
24 I'm sorry. Solely your decision, Chief?

25 THE WITNESS: It is, yes.

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1 THE ARBITRATOR: Okay.

2 Q (By Ms. Benson) Why did you decide on
3 termination and not some lesser level of
4 discipline?

5 A There were a number of reasons. One,
6 clearly, this was not a truthful accusation.

7 Two, we had a number of people that
8 were complaining about working with her. We
9 were having trouble filling overtime shifts
10 because people felt like she would make
11 accusations against them.

12 Three, the City engaged in a very
13 expensive investigation that, that -- it, it
14 cost the law department, but it also cost us;
15 and then, four, reputation of the department,
16 which not only damages public trust, but it also
17 hinders our ability to recruit because it wasn't
18 -- it wasn't accurate with what actually goes on
19 in the department.

20 (Technical difficulties.)

21 THE COURT REPORTER: There he is.

22 MS. GUTTAU: There we go. I
23 think we froze for a minute. I don't know at
24 what point.

25 THE COURT REPORTER: I have a

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1 feeling he could hear him, that it was just the
2 video.
3 MS. GUTTAU: Can you hear us now,
4 sir?
5 THE ARBITRATOR: I'm -- Say that
6 again.
7 MS. GUTTAU: Did you hear any of
8 that? We froze here for a second.
9 THE ARBITRATOR: I'm not sure
10 what you're saying. I'm sorry.
11 MS. GUTTAU: Yeah. Could you
12 hear Chief Engler's answer? It, it froze for a
13 minute, and we weren't sure --
14 THE ARBITRATOR: Right, and I
15 heard -- I heard his answer, yes.
16 MS. GUTTAU: Okay. Thank you,
17 sir.
18 THE ARBITRATOR: Yep.
19 Q (By Ms. Guttau) Is it difficult to
20 undo the damage to the department in the
21 public's eyes?
22 A Yes.
23 Q Okay. Is it difficult for Captain
24 Mahler to recover from such an accusation?
25 A Yes.

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1 responsible for LFR and its reputation; right?
2 A That's correct.
3 Q Would you ever be able to place trust
4 in Ms. Benson again as a Lincoln firefighter?
5 A No.
6 MS. GUTTAU: Nothing further.
7 Nothing further at this time. And could we take
8 a restroom break?
9 THE ARBITRATOR: I think we need
10 to take a lunch break, don't we?
11 MS. GUTTAU: Yeah. I wasn't sure
12 what time it was.
13 THE ARBITRATOR: How much time do
14 you folks need.
15 MS. GUTTAU: Thirty?
16 MR. CORRIGAN: In order to get
17 through everything today --
18 MS. GUTTAU: I think 30.
19 MR. CORRIGAN: Yeah. Thirty
20 minutes.
21 THE ARBITRATOR: I didn't hear
22 you.
23 MS. GUTTAU: We're thinking 30 to
24 get through the witnesses that we need to today.
25 THE ARBITRATOR: Okay.

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1 Q Have you had any other cases, during
2 your tenure as chief, involving similar conduct
3 involving false accusations of such egregious
4 nature?
5 A No.
6 Q Okay. Are you bound by all of your
7 predecessors' disciplinary decisions?
8 A No.
9 Q Nonetheless, do you believe others
10 have been previously terminated for dishonesty
11 or conduct discrediting LFR?
12 A Yes.
13 Q Can you give a few examples of that?
14 A We had -- I'm trying to think of
15 names. I, I can think of two individuals that
16 were, were not truthful that resigned in lieu of
17 termination.
18 We had another individual who had --
19 was drinking and driving, and he wasn't -- he
20 wasn't truthful, and he was terminated. I
21 terminated an employee for, for lying, in
22 another case.
23 Q And was that also in 2021?
24 A Yes.
25 Q Okay. Just in closing, Chief, you're

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1 MS. GUTTAU: Unless, unless you
2 want longer. That's fine, too. We weren't --
3 Do you know how late you could go, sir, today?
4 We're just trying to time it.
5 THE ARBITRATOR: Four. We're
6 going to go through till four.
7 MS. GUTTAU: So four. Okay. All
8 right.
9 THE ARBITRATOR: So it is 12:06.
10 12:45.
11 (A lunch recess was taken from
12 12:06 p.m. to 12:45 p.m., at which time the
13 proceedings continued as follows:)
14 THE ARBITRATOR: Are we ready to
15 go?
16 MR. CORRIGAN: Yes.
17 MS. GUTTAU: Yes.
18 THE ARBITRATOR: All right.
19 Chief, you're still under oath.
20 THE WITNESS: Yes, sir.
21 CROSS-EXAMINATION
22 BY MR. CORRIGAN:
23 Q All right. Chief, I'm gonna ask you
24 just -- It might be a little easier if we use
25 the -- start with this notebook and the smaller

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1 A Yes.
 2 Q Specifically that she stated she and
 3 her crew --
 4 THE ARBITRATOR: Hold on a
 5 second. Where are you? What number?
 6 MR. CORRIGAN: It's on Exhibit
 7 139, page 18, which is in the left-hand quadrant
 8 of sheet 6.
 9 THE ARBITRATOR: Okay.
 10 Q (By Mr. Corrigan) And the City
 11 specifically stated that she and her crew -- by
 12 alleging that, "She stated she and her crew were
 13 abandoned in a dangerous, burning warehouse" by
 14 Shawn Mahler with nearly zero visibility at this
 15 April 26th, 2021, fire scene; right?
 16 A Yes.
 17 Q You also stated in your letter, that
 18 is the pre-disciplinary letter, that the
 19 evidence in position -- in the possession of the
 20 City, that the City felt supported there were
 21 allegations that there was a transcript or [sic]
 22 audio recording of the radio traffic; right?
 23 A Yes.
 24 Q And that's, that's the transcript that
 25 we've been talking about today of the radio

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1 Q And that order of Judge Kopf was part
 2 of the evidence that you believe supported the
 3 conclusion that she engaged in misconduct?
 4 A Yes.
 5 Q And the report of Attorney Torrey
 6 Gerdes, that was also among the evidence that
 7 you considered that you felt supported she
 8 engaged in misconduct?
 9 A Yes.
 10 Q These declarations of -- The other
 11 people that signed declarations in opposition to
 12 the motion for temporary injunction, those were
 13 also things that you considered as being --
 14 supporting she engaged in misconduct? If you
 15 want to look at the pre-disciplinary letter.
 16 A Yeah. I don't remember -- I know her
 17 declaration. I don't know about the others.
 18 Q Okay. Why don't you look at
 19 Exhibit 138, page 2, paragraph 2(e).
 20 A (Witness complies.)
 21 MS. LEASURE: He dropped off.
 22 THE COURT REPORTER: Oh, we lost
 23 him again. Thank you, Tiffany.
 24 (Technical difficulties.)
 25 (An off-the-record discussion was

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1 traffic from dispatch to when Truck 8 left?
 2 A Yes.
 3 Q And there was a memorandum and order
 4 from Judge Kopf, dated August 26th, 2021; right?
 5 A Yes.
 6 Q Now, Judge Kopf, he never actually had
 7 a hearing, did he, on this motion for a
 8 temporary injunction?
 9 A Not that I was at.
 10 Q There was -- The declarations were
 11 submitted, no witnesses testified?
 12 A I don't know exactly what the process
 13 was.
 14 Q Okay. But you didn't go up to the
 15 court --
 16 A I was not at the courthouse.
 17 THE ARBITRATOR: Did you say no
 18 witnesses testified?
 19 MS. GUTTAU: He said he didn't
 20 know.
 21 THE WITNESS: I don't know. I, I
 22 was never at a court hearing.
 23 Q (By Mr. Corrigan) But you signed the
 24 declaration?
 25 A I did, yes.

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1 had.)
 2 THE ARBITRATOR: All right. Can
 3 you hear me now?
 4 THE COURT REPORTER: Yep.
 5 THE ARBITRATOR: I'm sorry. This
 6 computer is killing me. All right. How close
 7 are you to be being done, John.
 8 MR. CORRIGAN: I'm sorry. It's
 9 going to take a while. What time is it?
 10 MS. GUTTAU: 4:18.
 11 THE ARBITRATOR: You're 18
 12 minutes past closing.
 13 (An off-the-record discussion was
 14 had, and at 4:21 p.m., the proceedings were
 15 continued to June 21, 2022.)
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 25

1 FEDERAL MEDIATION AND CONCILIATION SERVICE
2 BEFORE ARBITRATOR STEVEN RUTZICK

3 LINCOLN FIREFIGHTERS) FMCS CASE NO.
4 ASSOCIATION, IAFF LOCAL) 22103-00847
5 644, and AMANDA BENSON,)

6)
7 Grievants,)

8)
9 vs.) VOLUME II

10) PAGES 281-555
11 CITY OF LINCOLN,)

12)
13 Respondent.)

14 ARBITRATION HEARING held before
15 Arbitrator Steven Rutzick (via Zoom), with
16 Denise J. Lukasiewicz, CCR and Notary Public for
17 the State of Nebraska, counsel and all parties
18 present at the LFR Union 644 Hall, 241 Victory
19 Lane, Lincoln, Nebraska, beginning at 9:12
20 a.m., on the 21st day of June, 2022.

21 *** **

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23 ALSO PRESENT: Mr. Ryan Moser, Vice President
24 IAFF Local 644; Mr. Dave Engler, Fire Chief;
25 Tiffany Leasure, Paralegal for City of Omaha

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1 CITY EXHIBITS
2
3 EXHIBIT DESCRIPTION
4 1 8/16/21 Memorandum and Order Denying
5 Plaintiff's Motion for Injunction by
6 Senior District Judge Richard G.
7 Kopf, United States District Court
8 for the District of Nebraska,
9 8/15/21
10 2 Declaration of Fire Chief David
11 Engler
12 3 Declaration of BC Michael Smith
13 4 Declaration of Captain Mahler
14 5 Declaration of FAO Matt Roberts
15 6 Declaration of FF Morgan Hurley
16 7 Declaration of FF Jason Love
17 8 Declaration of FF Stephen Dyer
18 9 Declaration of FF Trent Borchers
19 10 Statement of Curt Faust
20 11 8/19/21 Investigation Report into
21 4/26/21 Fire Incident by Attorney
22 Torrey Gerdes, Baylor Evnen Law Firm
23 12 Audio of Fire Department Radio
24 Recording of 4/26/21 Warehouse Fire
25 13 Transcript of Fire Department Radio
Recording of 4/26/21 Warehouse Fire
14 Declaration of Aishah Witte,
15 Authenticating Audio Transcript
16 Benson's 5/5/21 Complaint Regarding
the 4/26/21 Warehouse Fire
17 Warehouse Photographs

1 CITY EXHIBITS, CONT'D
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3 EXHIBIT DESCRIPTION
4 17 LFR Prime Report of Warehouse Fire
5 18 Benson's 6/9/21 Grievance
6 19 Benson's 6/11/21 Affidavit
7 20 Benson's 8/9/21 Affidavit
8 21 Media Articles
9 22 Benson's Interview Audio 7/14/21
10 23 8 of '21 Grievance Hearing RE:
11 June 9, 21 Grievance
12 24 9/24/21 Denial of 6/9/21 Grievance
Letter to Benson
13 25 9/27/21 Pre-Disciplinary Meeting
14 Notice Letter to Benson
15 Audio of 10/12/21 Pre-Disciplinary
Meeting
16 27 Transcript of 10/12/21 Meeting
17 28 10/19/21 Termination Letter
18 29 CBA, 8/20/20 to 8/31/21
19 30 CBA, 8/19/21 to 8/30/23
20 31 LFR Professional Code of
21 Ethics/Standard of Conduct Policy
22 LFR FF Safety Policy
23 LFR 2020 Annual Report
24 Captain Mahler's Awards
25 2017 Letter to Mahler
Terminal Building Fire Near-Miss
Report, 2/19/18

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4	37 Chief Engler's Video Message
5	38 Healy Expert Report
6	39 Lincoln Municipal Code - Cause for
7	Disciplinary Action
8	40 Lincoln Municipal Code - Dismissal
9	and Grievance Procedure
10	41 Grievant's 11/3/21 Appeal E-mail
11	42 Documents Regarding LFR Discipline
12	43 Captain Mahler Notes for
13	Investigator Gerdes
14	44 Witte Investigation Correspondence
15	45 Witte Investigative File
16	46 Benson's Motion for Preliminary
17	Injunction
18	47 Benson's Brief ISO Preliminary
19	Injunction
20	48 Benson 2014 Complaint Retraction
21	49 Mahler Discipline Reversal
22	50 Management Policy
23	51 Victim Removal Presentation
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4	121 E-mail from Kelly Brandon to Chris
5	Connolly and Ms. Gerdes, 7/12/21
6	122 E-mail from Engler to Mahler, 7/1/21
7	123 Interview Audio Recording
8	124 Letter to Ms. Gerdes
9	125 Declaration of David Engler
10	126 Declaration of Michael Smith
11	127 Declaration of Matthew Roberts
12	128 Declaration of Morgan Hurley
13	129 Declaration of Trent Borchers
14	130 Declaration of Stephen Dyers
15	131 Declaration of Jason Love
16	132 Declaration of Shawn Mahler
17	133 Grievance Letter
18	134 Declaration of Edward Hadfield
19	135 Enhanced Fireground Safety,
20	Effective Use of Division & Group
21	Supervisors
22	136 Transcript of Grievance Hearing,
23	8/20/21
24	137 Letter of Chief Engler Denying
25	Grievance, 9/24/21
	138 Notice of Pre-disciplinary Action,
	9/27/21
	139 Transcript of Pre-disciplinary
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4	100 CBA
5	101 4/27/2011 Suspension Notice
6	102 11/4/2014 Memo of BC Pashalek
7	103 Dispositional Memorandum of Kimberly
8	Taylor-Riley
9	104 4/4/21 Complaint
10	105 E-mail of BC Curt Faust, 4/4/21
11	106 E-mail of BC Michael Smith, 4/7/21
12	107 E-mail of BC Curt Faust, 4/13/11
13	108 E-mail of Benson to Witte, 4/18/21
14	109 Transcript of Radio Traffic
15	110 LFR Incident Report, 4/26/21
16	111 E-mail from Benson to Faust & Witte,
17	5/5/21
18	112 E-mail from Benson to Witte, 5/13/21
19	113 Witte Investigation Summary
20	114 E-mail to Benson from Witte, 5/25/21
21	115 Transcript of Audio File
22	116 E-mail from Smith to Witte, 5/26/21
23	117 Investigation Summary
24	118 Grievance, 6/9/21
25	119 Benson Affidavit, 6/11/21
	120 E-mail from Schrunck to Engler,
	6/14/21

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4	140 Termination Letter, 10/19/21
5	141 Underlying Confidential
6	Correspondence Regarding Comparative
7	Discipline
8	142 Disciplinary Action, 10/14/11 to
9	10/14/21
10	143 Performance Evaluations
11	144 Deposition of Shawn Mahler, 5/9/22
12	145 Awards and Recognitions
13	146 LFR Best Practices No. 2-Division/
14	Group Supervision
15	147 Daisy Brayton Investigation
16	148 Text Message exchange between Faust
17	and Benson
18	149 Arbitration Award, RE: Dan Duncan
19	150 Arbitration Award, RE: Jon Reed
20	151 E-mail from Corrigan to McDaniel,
21	11/3/21
22	152 E-mail, Benson to Witte, 4/22/21
23	153 E-mail, BC Smith, 4/22/21
24	154 Discipline Letter, 5/24/21
25	155 Discipline Letter, 6/6/22
	156 Telephone Log Activity
	156 E-mail from Mahler to Witte, 6/24/21
	*** **

<p style="text-align: right;">Page 293</p> <p>1 * All exhibits offered with objections to 2 Union's 101, 102, 103, 147, 149, 150; and City 3 Exhibits 20, 21, 38, 46, and 47</p> <p>4 * Union Exhibit 149 was offered and received on 5 page 142 6 * Union Exhibit 150 was offered on page 143 and 7 received on page 144</p> <p>8 * Union Exhibit 156, Telephone Log Activity, was 9 marked on page 750 10 * City Exhibit 156, E-mail to Aishah from 11 Mahler, was marked on page 1738</p> <p>12 * City Exhibit 50 was marked on June 22nd, 2022, 13 offered and received on page 571</p> <p>14 *** **</p> <p>15 16 17 18 19 20 21 22 23 24 25</p>	<p style="text-align: right;">Page 294</p> <p>1 (On June 21, 2022, at 9:12 a.m., 2 the proceedings continued as follows:)</p> <p>3 MS. GUTTAU: So, last night, 4 after we ended for the evening, John and I 5 spoke, and we actually have three firefighters 6 this morning that we're going to start with, 7 rather than with the chief, just due to 8 scheduling issues. And so we're going to call, 9 our first witness this morning is Matthew 10 Roberts, who's a Lincoln firefighter.</p> <p>11 THE ARBITRATOR: Okay. 12 FAO MATTHEW ROBERTS, 13 having been sworn to tell the 14 truth, the whole truth and nothing 15 but the truth, testified as follows: 16 THE ARBITRATOR: Mr. Roberts -- 17 (unintelligible) -- 18 MS. GUTTAU: Pardon? 19 THE ARBITRATOR: Did you hear 20 what I said? 21 MS. GUTTAU: No. 22 THE ARBITRATOR: Can you please 23 state and spell your name for the record. 24 THE WITNESS: Matthew, 25 M-A-T-T-H-E-W, Roberts, R-O-B-E-R-T-S. THE ARBITRATOR: All right.</p>
<p style="text-align: right;">Page 295</p> <p>1 Proceed.</p> <p>2 MS. GUTTAU: Thank you.</p> <p>3 DIRECT EXAMINATION</p> <p>4 BY MS. GUTTAU:</p> <p>5 Q Mr. Roberts, can you tell us what your 6 current position is with Lincoln Fire & Rescue?</p> <p>7 A Fire apparatus operator.</p> <p>8 Q Okay. And we'll talk a little bit 9 more about that later. But, before we do that, 10 how long have you been a firefighter, in total?</p> <p>11 A 24 years.</p> <p>12 Q And tell us a little bit about your 13 background, education, job history before you 14 joined Lincoln Fire & Rescue.</p> <p>15 A I have an Associate's degree in fire 16 protection technology. I also have a year of 17 experience with the Columbus Fire Department.</p> <p>18 Q What year did you join Lincoln Fire & 19 Rescue?</p> <p>20 A 1998.</p> <p>21 Q And have you worked for them 22 continuously since then?</p> <p>23 A Correct.</p> <p>24 Q All right. What position were you 25 hired into?</p>	<p style="text-align: right;">Page 296</p> <p>1 A Firefighter.</p> <p>2 Q And, then, what other positions have 3 you held since then?</p> <p>4 A Fire apparatus operator.</p> <p>5 Q And tell us a little bit, in your 6 words, what's a fire apparatus operator do? Did 7 you have to take a test to become that?</p> <p>8 A It's a promotional process.</p> <p>9 Q Promotion?</p> <p>10 A Yes.</p> <p>11 Q What do -- What's your role?</p> <p>12 A Obviously, to -- Upkeep of the 13 apparatus, responding to calls, knowing your 14 streets, your district, your buildings, and 15 maintenance of the equipment on the apparatus. 16 If there's any issues, report that to the proper 17 chain to get those issues taken care of.</p> <p>18 Q At a fire scene, what, what can be 19 your role, different roles?</p> <p>20 A Operation of the equipment as a 21 driver on a truck. Oftentimes, my crew will 22 potentially go in on interior; oftentimes, I'll 23 stay exterior.</p> <p>24 THE ARBITRATOR: Heidi, it's -- 25 his speaker is cutting off and on.</p>

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1 Q Is he a stickler about it?
 2 A Can be, yes.
 3 Q And, so, on that day, you were
 4 assigned to Truck 1 with Ms. Benson and who
 5 else?
 6 A Morgan Hurley.
 7 Q What she's -- When Ms. Benson is your
 8 acting captain, what does that mean?
 9 A Amanda took the promotional test,
 10 scored well enough to be a candidate, to be put
 11 into position to ride out a grade, to --
 12 opportunity for Amanda to get -- or anybody on
 13 that list -- to get some experience as a captain
 14 before they're actually promoted.
 15 Q Okay. And do you know about how long
 16 Ms. Benson had been a firefighter at that time?
 17 A I would have to guess about eight
 18 years, maybe.
 19 Q Okay. And you'd been about 23, 24?
 20 A Correct.
 21 Q Okay. How long had -- Was Morgan
 22 Hurley on your crew?
 23 A Yes, she was.
 24 Q So was it just the three of you on
 25 that crew that day?

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1 A Just the three of us, yes.
 2 Q What was Morgan Hurley's role?
 3 A She was the firefighter.
 4 Q Okay. And how long had she been a
 5 firefighter, approximately, if you know?
 6 A I believe Morgan was on probation, so
 7 less than six months.
 8 Q As your acting captain, was Ms. Benson
 9 responsible for her crew's safety?
 10 A Yes.
 11 Q If, if you -- If she felt you were
 12 unsafe, at any time, did you expect her to
 13 communicate that to you?
 14 A I would.
 15 Q Did she ever do that?
 16 A No.
 17 Q Let's talk a little bit about that
 18 fire. What kind of fire -- how would you
 19 describe the fire at the warehouse?
 20 A I'd describe it as a small fire in a
 21 pile of cardboard, in a big, open warehouse
 22 building.
 23 Q Okay. And when you were at the fire,
 24 were you with Ms. Benson and Ms. Hurley during
 25 the fire?

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1 A Yes, I was.
 2 Q Okay. So, let's back up a little bit.
 3 So how did you get called to this warehouse
 4 fire, what had your crew been doing?
 5 A We were at Southeast Community
 6 College, Amanda gave us some firefighter
 7 survival training, and we were on our way back
 8 to the station. We were at, roughly, 48th and
 9 Vine Street when the dispatch came in for the
 10 fire.
 11 Q And do you know --
 12 MS. GUTTAU: Sorry.
 13 THE ARBITRATOR: Okay. Go ahead.
 14 MS. GUTTAU: Can you hear us?
 15 THE ARBITRATOR: Yeah. I lost
 16 the audio, I just -- it came in a bit before
 17 this. Keep going.
 18 MS. GUTTAU: Keep going? Okay.
 19 THE ARBITRATOR: I can hear you
 20 perfect, but I'm trying to get a laptop in that
 21 will work better for me, but, anyway, for right
 22 now, let's keep going.
 23 MS. GUTTAU: Okay.
 24 Q (By Ms. Guttiau) Okay. So you got --
 25 you had been doing training and you get called

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1 to the fire. Do you know, had anybody arrived
 2 at that fire before you, if you recall?
 3 A Station 5, Engine 5, Truck 5 and
 4 Medic 5 arrived just ahead of us.
 5 Q Okay. What was Truck 1's job once you
 6 arrived, what did you do?
 7 A We were assigned to go interior to
 8 check for fire extension.
 9 Q What's fire extension, what's that
 10 mean?
 11 A It means you locate the -- try to
 12 locate the seed of the fire and determine if the
 13 fire is extended anywhere else, and maybe
 14 through the walls, into any other rooms.
 15 Basically, get a handle on where the fire is
 16 going and where it's at.
 17 Q And once you went in the first time --
 18 Do you know about how long you were in there the
 19 first time?
 20 A Approximately, 10 to 12 minutes.
 21 Q Okay. And then you exited at that
 22 time?
 23 A Correct.
 24 Q Okay. Did you have any trouble
 25 finding the exit?

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1 A We followed the hose line out.

2 Q And why did you follow the hose line
3 out?

4 A Smoke conditions had become pretty
5 heavy. I felt that it was important that we,
6 we -- it's best practice, especially given that
7 Morgan is a young firefighter, I didn't feel
8 like we had any issues trying to find our exit,
9 but, again, I think it was a teaching moment to
10 find the hose line and give Morgan the
11 opportunity to follow it out.

12 Q Okay. Was, was Ms. Benson and Morgan,
13 was their intention, did it appear to you, they
14 were not going to follow it out, at first, and
15 you asked them to follow it out?

16 A I did ask them to follow it out. I
17 think Morgan and Amanda starting walking towards
18 the doors. Again, I stopped them and I said,
19 let's, let's follow the hose line out.

20 Q And, just as a teaching moment?

21 A Correct.

22 Q Would you have had any trouble walking
23 out if you hadn't have followed the hose?

24 A No.

25 Q We heard yesterday from Jason Love, an

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1 FAO, who talked about -- as an FAO, usually
2 outside the building, but, in this fire, were
3 you in the building with Ms. Benson?

4 A I was.

5 Q And why was that?

6 A I asked Amanda, after we were given
7 the assignment to go interior, if she would like
8 me to go in with them, or work on the exterior,
9 and she stated that she would like for me to go
10 in with them.

11 Q Okay. So, each time that Ms. Benson
12 and Ms. Hurley entered the warehouse and were
13 inside, you were also part of that crew inside
14 with them?

15 A Yes, I was. The second time that we
16 entered, I was behind them by, approximately,
17 15 to 30 seconds, but, other than that, I was
18 with them, yes.

19 Q The rest of the time?

20 A Right.

21 Q Okay. Who was the incident commander
22 for the fire scene?

23 A Curt Faust.

24 Q And he was an acting battalion chief?

25 A Yes, he was.

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1 Q Why did -- So you exited the first
2 time without any issue; correct?

3 A Correct.

4 Q Okay. What did you do when you were
5 on the outside? Was that -- All three of you
6 were on the outside at that point?

7 A Yes.

8 Q What did you do, then, at that time?

9 A My initial intentions were to refill
10 my SCBA bottle, I was getting low on air, I was
11 under half. At that -- When we exited, I
12 started to take off my helmet, mask, gloves,
13 with the intentions of taking my bottle over to
14 Air 14 to replace it. I saw Truck 8 come around
15 the AB corner, I walked over. It appeared to me
16 that they were moving with purpose. Firefighter
17 Dyer and Firefighter Borchers had their masks
18 on. They appeared to me that they were going
19 towards the door to go interior. I walked over
20 to Captain Mahler, who appeared to be getting
21 ready to put his mask on, and I made a
22 face-to-face contact with them to explain that
23 when we were in the first time, that I had
24 noticed a possible ventilation exit above the --
25 generally, above the fire. Shawn acknowledged

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1 that, said okay, and they continued on towards
2 the overhead door.

3 Q Okay. And what did you do next after
4 you had that encounter?

5 A I walked back, I had placed my tools
6 on the ground, I walked back to those, with
7 intentions of taking my SCBA off. I noticed
8 that Amanda had made a face-to-face contact with
9 Shawn, I don't know what was said, it was very
10 brief.

11 Q Was that -- just stopping you -- was
12 that on the exterior --

13 A That was --

14 Q -- of the building?

15 A -- on the exterior, yes.

16 Q Okay. And, then, what did you observe
17 next, or do next?

18 A I was in the process, I was going to
19 take off my SCBA, then Amanda got my attention
20 and told me that we were going to -- going to go
21 back into the structure.

22 Q And did she tell you why?

23 A No.

24 Q Okay. Did you have any understanding
25 of why?

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1 A No.
 2 Q Okay. Did it surprise you?
 3 A A little bit, yes.
 4 Q And why is that?
 5 A First of all, I was low on air.
 6 Secondly, it was my opinion, or thought, that
 7 Truck 8 was going in. When they came around the
 8 AB corner, that told me they had probably done a
 9 360 of the structure. I've worked enough with
 10 Shawn to know that he always has a plan. I saw
 11 him giving some direction to his crew, so I
 12 assumed that they were going to go in, possibly
 13 open up some doors, and that they would give us
 14 some direction on the exterior of what we needed
 15 to do there.
 16 Q Okay. At this point, you, Benson and
 17 Hurley, your crew had been in and out of the
 18 fire once before Truck 8, Captain Mahler, had
 19 even arrived?
 20 A Yes.
 21 Q Was there doors open at this time?
 22 A There was two overhead doors open.
 23 Q Okay. Can you describe these doors?
 24 Are they big overhead doors or --
 25 A They were commercial-like, overhead

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1 to -- that you're going to go back in by Acting
 2 Captain Benson?
 3 A Correct.
 4 Q So what did you do when you get that
 5 instruction, what do you do?
 6 A Got my gear back on, Amanda and Morgan
 7 started proceeding towards the overhead doors
 8 that were open; I continued to get my gear back
 9 on. When I completed that, I made my way to the
 10 door. Amanda and Morgan went in ahead of me.
 11 When I got to the door, I could see that we were
 12 back, close to the compactor, where we had been
 13 previously. At this time, the visibility had
 14 improved. I walked in, Engine 10, who had been
 15 in there previously with us, they were exiting
 16 because their low-air alarms were going off. I
 17 made contact with Amanda, asked her what we were
 18 supposed to be doing, and she said -- stated
 19 that she did not know.
 20 Q Okay. So then what did you do?
 21 A Amanda had a thermal-imaging camera,
 22 she was giving direction to crew on the nozzle,
 23 I don't recall who the crew was, but it was my
 24 impression that Amanda was looking for hot spots
 25 and giving them direction where to apply the

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1 doors.
 2 Q Okay. When you were inside the fire,
 3 or inside the warehouse, could you always see
 4 the way out to the overhead doors?
 5 A The first time?
 6 Q Yeah.
 7 A No.
 8 Q Okay.
 9 A After we got up close to the fire,
 10 when Engine 10 applied water to the fire, it
 11 increased the smoke, decreased the visibility,
 12 which is totally normal, and there was a point
 13 where we were close to zero visibility and I
 14 could no longer see the doors.
 15 Q And that was the first time?
 16 A That was the first time we were in,
 17 yes.
 18 Q But then when it was time to exit, you
 19 were able to see a way out?
 20 A As we got further -- or closer to the
 21 doors, we got away from the fire, yes, we could
 22 see where the doors were at. I would estimate
 23 20 to 30 feet from the doors.
 24 Q Okay. So, then, as you stated, you
 25 were outside the first time, you're instructed

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1 water.
 2 Q Okay. What's a thermal-imaging
 3 camera, just for our Arbitrator, and how does
 4 that work?
 5 A It's a camera that detects heat. It
 6 also tells you actual temperatures of what
 7 you're looking at.
 8 Q Was this fire, when you were inside,
 9 unusually hot?
 10 A No.
 11 Q Okay. Again, at this point, at -- you
 12 go back in a second time, you said you're at the
 13 door and Benson and Hurley had gone in, in front
 14 of you?
 15 A Yeah.
 16 Q Okay. Did you, when you're at the
 17 door, did you have any trouble spotting them
 18 inside?
 19 A No.
 20 Q Did you then make your way over to
 21 them?
 22 A Yes.
 23 Q And when you're in there the second
 24 time, did you, at any time, see Truck 8's crew?
 25 A The only person that I recall seeing

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1 from Truck 8 was Firefighter Borchers. He had
 2 actually crawled up on this machine and
 3 requested a hose line, and that's the only
 4 person I recall from Truck 8.
 5 Q Okay. When he was up on the machine,
 6 was he above you?
 7 A Yeah.
 8 Q A little bit?
 9 A Yeah, a little bit, yeah.
 10 Q Did you have any trouble seeing him?
 11 A I could make out his outline pretty
 12 well. I knew his trim because he has some
 13 specific stickers on his helmet, we worked
 14 together, he was on Truck 1, so I knew his trim.
 15 Q And you could see those stickers?
 16 A Correct.
 17 Q You said before you went back in the
 18 second time, you had a concern with your SCBA.
 19 Did Ms. Benson check on your air supply, or your
 20 SCBA, before you went back in the second time?
 21 A No.
 22 Q Okay. If this fire had been as
 23 dangerous as she's claiming, would you have
 24 gone back in with low oxygen?
 25 A With low air?

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1 A No.
 2 Q Did you ever hear Ms. Benson mention
 3 to the incident commander that you could assist
 4 with -- that Truck 1 could assist with
 5 ventilation?
 6 A Can you repeat the question?
 7 Q Yeah. Did you hear on the radio,
 8 when Ms. Benson said, we can assist with,
 9 essentially, assist with ventilation, and that
 10 incident commander said, yes, assist with
 11 ventilation?
 12 A That was the -- Battalion 1 gave us
 13 that assignment, to assist with ventilation.
 14 Q Yeah, okay. And --
 15 A Amanda requested ventilation,
 16 Battalion 1 responded back that Truck 8 was
 17 assigned to ventilation, and reassigned us to
 18 assist them.
 19 Q Okay. And does "assist with," to you,
 20 in your experience and training, mean that you'd
 21 been reported to Truck 8?
 22 A No.
 23 Q You still reported to Ms. Benson?
 24 A Correct.
 25 Q Okay. In your 25 years of experience,

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1 Q Low air.
 2 A No.
 3 Q But you felt it was okay to go back
 4 in?
 5 A Yes.
 6 Q And, because you didn't think the
 7 conditions were that dangerous?
 8 A Right. I felt that whatever we needed
 9 to do, we needed to get done, because I did have
 10 low air, but I didn't feel uncomfortable doing
 11 that.
 12 Q If it had been especially dangerous,
 13 what would you have done, regarding your air, I
 14 should say?
 15 A Yeah, I would have went to Air 14 and
 16 got a new bottle and reported back.
 17 Q Was Captain Mahler, did you understand
 18 him to be the group supervisor over you at this
 19 time?
 20 A No.
 21 Q Did you understand him to be the group
 22 supervisor over you at any time?
 23 A No.
 24 Q Did you ever believe you were
 25 reporting to him instead of Ms. Benson?

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1 is assisting another crew with a task, has it
 2 ever meant to you that the -- that it's implied
 3 that the captain that's working on the task the
 4 first time, then, is somehow supervising the
 5 second crew?
 6 A No.
 7 Q And you understood you were always
 8 reporting to Benson?
 9 A Correct.
 10 Q As such, was she responsible for your
 11 safety?
 12 A Yes.
 13 Q Did Captain Mahler ever abandon you
 14 and your crew within an IDLH environment?
 15 A No.
 16 Q Did you know Ms. Benson claims that
 17 Captain Mahler was not talking with her at the
 18 fire -- Even if he was not talking with her, did
 19 you ever believe that you or your crew was ever
 20 abandoned by him in an IDLH environment?
 21 A No.
 22 Q Did you ever feel like you were left
 23 by him in dangerous peril?
 24 A No.
 25 Q When you were in the warehouse with

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1 Ms. Benson the second time, and you were in
2 there with -- Truck 8 is in there somewhere as
3 well, or your understanding is?
4 A Correct.
5 Q Okay. Crew, I should say, not the
6 truck.
7 A Yeah.
8 Q Could you always -- Were you with her
9 and you could see her and Morgan during that
10 second time you were in there?
11 A Yes. Overall, the smoke conditions
12 had improved the second time. There was never a
13 time when we were in, on the second time, where
14 we could not see the exit, but the overhead
15 doors. The sun was shining through the doors.
16 Q And your understanding, from reading
17 the allegations, is that it was the second time
18 that you were in the warehouse that Ms. Benson
19 is claiming that Captain Mahler abandoned you
20 guys at the warehouse?
21 A Yes.
22 Q Did you have to crawl to get out the
23 second time?
24 A No, we walked.
25 Q You just walked?

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1 A I'd say 5 to 10 minutes.
2 Q And did you do anything while you were
3 in there, or what were you doing?
4 A Helped move a little bit of -- or
5 helped move a hose line. Pretty much just
6 stayed behind Amanda.
7 Q You felt safe the whole time?
8 A Yeah.
9 Q When did you -- or why did you guys
10 then exit at that time?
11 A My low-air alarm went off.
12 Q And so did you exit with Benson and
13 Hurley at the same time?
14 A Yes.
15 Q At that point, did -- had Captain
16 Mahler abandoned you in the warehouse?
17 A No.
18 Q In fact, at the time that Ms. Benson
19 is claiming that Mahler abandoned you and her
20 and Hurley in the burning warehouse, didn't you
21 and your crew actually exit the warehouse before
22 he did?
23 A Yes, we did.
24 Q Okay. So he didn't abandon you or
25 leave you in there to, you know, be in harm's

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1 A Yeah. And we did not follow hose
2 line.
3 Q And you did not follow hose line?
4 A No.
5 Q Okay. Just walked to the door?
6 A Correct.
7 Q Because conditions had improved at
8 that point?
9 A Yes.
10 Q Did you enter -- So, skipping ahead a
11 little bit, did you go back in, at any time?
12 A After we got our bottles filled, we
13 were outside for, approximately, 20 to 30
14 minutes, and we did, in fact, go in a third
15 time, yeah.
16 Q And did you have any trouble going in
17 and out the third time?
18 A At that point, there was virtually no
19 smoke, to speak of, and what we were doing was
20 called overhaul, we were digging into the pile
21 of cardboard, trying to finding hot spots.
22 Q So, back to the second time, which is
23 the time period at issue that you're in the
24 fire, so do you -- approximately how long you
25 were in there the second time?

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1 way, did he --
2 MR. CORRIGAN: Objection.
3 Foundation.
4 Q (By Ms. Guttan) -- if he --
5 A No.
6 MR. CORRIGAN: Hold on.
7 MS. GUTTAU: He has to rule on it.
8 THE ARBITRATOR: (Unintelligible.)
9 MS. GUTTAU: Pardon?
10 THE ARBITRATOR: What was the
11 question?
12 Q (By Ms. Guttan) Yeah. The question
13 was, if you and your crew left the burning
14 warehouse before Mahler, he could not have
15 abandoned you inside it --
16 MR. CORRIGAN: That's not the
17 question.
18 MS. GUTTAU: We'll have to read
19 it back.
20 (The requested portion of the
21 testimony was read back by the Court Reporter.)
22 MR. CORRIGAN: That's my
23 objection. She said, fine, that Mahler had
24 some -- that he knows what Mahler's intention
25 was with regard to Mahler's actions in the fire.

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1 years.
 2 Q Ever permanently stationed with
 3 Captain Mahler?
 4 A No.
 5 Q How would you describe Captain Mahler
 6 as a captain?
 7 A I would say he's very knowledgeable in
 8 his job, always very open with his knowledge as
 9 far as making sure that we know everything that
 10 he can possibly teach us about everything.
 11 Q Do you have -- believe, based on your
 12 experience with him, that he takes safety
 13 seriously?
 14 A Very much so.
 15 Q At a fire incident, do you observe him
 16 to be what I call chatty, does he talk a lot at
 17 incidents?
 18 A No.
 19 Q Do you know if Captain Mahler is hard
 20 of hearing?
 21 A He is, yes.
 22 Q And how do you know that?
 23 A He now has hearing aids that he got in
 24 the last couple of months.
 25 Q Before that, could you tell, by your

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1 observations, that he was hard of hearing?
 2 A Yeah, you'd have to repeat yourself
 3 once in awhile to him.
 4 Q Do you know Ms. Benson?
 5 A I do.
 6 Q And how do you know Ms. Benson?
 7 A I've worked with her on a few
 8 occasions throughout the years. When I was
 9 stationed at Station 1, she was also stationed,
 10 on a different shift, at Station 1.
 11 Q Did you ever work under Ms. Benson as
 12 an acting captain?
 13 A A few times, yes.
 14 Q Anything that you can share about your
 15 impressions of her as an acting captain?
 16 A Nothing really of note, honestly, no.
 17 Q Okay. So I'm going to take us to
 18 April 26th, 2021, and we've been calling that
 19 incident the warehouse fire, so you'll know what
 20 I'm talking about when I say "the warehouse
 21 fire"?
 22 A Correct.
 23 Q You were stationed at Station 8 that
 24 day?
 25 A Correct.

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1 Q Truck 8?
 2 A Correct.
 3 Q Reporting to Captain Mahler?
 4 A Yes.
 5 Q And who was on your crew with you?
 6 A It was Captain Mahler, Jason Love was
 7 driving, and myself and Trent Borchers in the
 8 back.
 9 Q When you got to the warehouse fire,
 10 you weren't the first truck to arrive; correct?
 11 A No.
 12 Q Who else was there?
 13 A I believe Truck 5 and Truck 1 were
 14 both there before us.
 15 Q Did you see Truck 1 when you arrived?
 16 Did you see them on the exterior?
 17 A I don't remember noticing them, no.
 18 We kind of went to the Charlie side of the
 19 structure.
 20 Q FAO Love and Firefighter Roberts have
 21 testified already, so, if -- from what I -- from
 22 what we've heard so far, I understand that
 23 Truck 8's first assignment was to check the
 24 utilities; is that right?
 25 A That's correct.

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1 Q And when you accomplished that task,
 2 you returned to the exterior of the building?
 3 A Correct.
 4 Q And, then, you were assigned to
 5 ventilation; is that right?
 6 A Correct.
 7 Q Okay. When you were assigned the
 8 ventilation task, do you know where Truck 1 was?
 9 A I don't.
 10 Q Did you observe Ms. -- Acting Captain
 11 Benson speak with Captain Mahler outside the
 12 building?
 13 A I never saw that, no.
 14 Q Okay. Can you walk me through what
 15 the ventilation task was and how you
 16 accomplished that?
 17 A Firefighter Borchers and I went in and
 18 opened up a big garage door, that was kind of
 19 the gist of what we could accomplish with
 20 ventilation at that point.
 21 Q And where was Captain Mahler when you
 22 and Firefighter Borchers were opening the
 23 overhead door?
 24 A Somewhere close to us. He kind of
 25 sent us on our mission and kind of stays

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1 oriented to where we needed to go.

2 Q Can you describe how you opened that
3 door? Were you opening it from the interior or
4 the exterior?

5 A We opened it from the interior.

6 Q What were the conditions like when you
7 opened that door, when you entered the building
8 to open the door?

9 A It was fairly smoky, but that started
10 to clear up quite a bit --

11 Q And it --

12 A -- almost instantly, when we opened
13 that big garage door.

14 Q So the clearing conditions was a
15 result of opening the door?

16 A Correct.

17 Q And were there any other ventilation
18 tasks that you accomplished after opening the
19 door?

20 A I don't believe so.

21 Q There's been testimony from FAO Love
22 that Captain Mahler instructed him to pull some
23 tools, I'm thinking, some sort of saw and some
24 sort of hook?

25 A Correct. That was initially when we

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1 were given the task of ventilation, he sent FAO
2 Love around, back to the rig, to get a few tools
3 that we didn't bring with us in case we were to
4 need them.

5 Q Did you end up needing those tools?

6 A No.

7 Q Okay. So I want to go back to opening
8 the garage door, or the overhead door. So you
9 opened the door, you and Borchers and Mahler are
10 on the interior; correct?

11 A Honestly, I'm not a hundred percent
12 for sure if Captain Mahler walked in with us at
13 that point or if he was waiting by the walk-in
14 door. We didn't have to go very far inside the
15 structure to open that big door.

16 Q Okay. And what -- Who else was in
17 there, who did you see?

18 A I don't remember seeing anybody else
19 at that point.

20 Q At some point, on the interior, did
21 you see the crew of Truck 1?

22 A Once we got to the handline, I noted
23 that they were there with us.

24 Q Can you just walk through how -- what
25 happened between those two points in time?

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1 A We were making our way back, towards
2 where the fire seemed to be coming from, and I
3 believe it was Engine 10 -- don't quote me on
4 what exact rig it was -- they were running
5 out of air as we got there, so they were
6 going to have to put down their handline, so
7 Firefighter Borchers and I took it over and
8 started trying to extinguish the fire that ended
9 up being some sort of a cardboard compactor
10 machine thingamajigger.

11 Q And when you say "handline," you're
12 referring to a hose?

13 A Correct.

14 Q And, at that point, did you see the
15 crew of Truck 1?

16 A Yes.

17 Q Okay. And who did you see?

18 A I saw Acting Captain Benson and
19 Probationary Firefighter Morgan Hurley.

20 Q Did you see FAO Roberts?

21 A I don't remember seeing him.

22 Q Okay. What did you see Captain --
23 Acting Captain Benson doing, what was she doing
24 in there?

25 A I'm not a hundred-percent sure. I

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1 would assume -- Well, I'm not going to assume.

2 Q What did you see Firefighter Hurley
3 doing?

4 A She was trying to assist Borchers and
5 I with the nozzle.

6 Q Okay. Did she seem to be enjoying
7 that?

8 A Yeah.

9 Q Was -- Is it typical for a truck crew
10 to be operating a nozzle?

11 A Not normally, no.

12 Q Okay. And, so, at that point, after
13 you had opened the door and then were helping
14 with the hose line, did you consider that
15 ventilation task done? Did you know what your
16 assignment was at that point?

17 A At that point, Captain Mahler was
18 doing some sort of an assessment, I assume, on
19 if we were going to do any more, further
20 assessment. Trent and I kind of took over the
21 nozzle just so that there was some sort of fire
22 suppression going on while they were switching
23 out handline crews.

24 Q Okay. And did you see -- Did you see
25 Captain Mahler, at all, in the interior of that

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1 that an attorney named Torrey Gerdes was
 2 investigating this incident?
 3 A Correct.
 4 Q And were you interviewed by
 5 Ms. Gerdes?
 6 A Yes I was.
 7 Q Did you provide her truthful
 8 information?
 9 A I did.
 10 Q And have you had an opportunity to
 11 review her report --
 12 A Yes.
 13 Q -- portions of the report that refer
 14 to statements you made?
 15 A Correct.
 16 Q And were these accurately reflected in
 17 the report?
 18 A Yes.
 19 Q So I'm going to ask you, in front of
 20 you, to turn to City Exhibit Number 8. Do you
 21 recognize this document?
 22 A Yes.
 23 Q And this is a Declaration that you
 24 submitted, you'll see it's dated on the third
 25 page there, the 21st of July, 2021?

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1 Q But you, you read it and you
 2 understood that it was under penalty of perjury --
 3 A Correct.
 4 Q -- when you signed it; right?
 5 Can you turn to page 2 of that document?
 6 A Yes.
 7 Q And we just talked about this, on
 8 paragraph 7, "At this incident, at no time did
 9 you consider Shawn Mahler to be a group
 10 supervisor over ventilation"; is that correct?
 11 A Correct.
 12 Q Have there been other incidents where
 13 your crew has been group supervisor?
 14 A I would imagine so.
 15 Q Did you, in your experience, did you
 16 always know when that was happening?
 17 A Usually, it's radio traffic that
 18 catches your ear, uh-huh, yeah.
 19 Q Paragraph number 9 says, Truck 8 was
 20 assigned to ventilation tasks after working on
 21 cutting the power to the structure. Truck 8 got
 22 the overhead door open; is that true?
 23 A Yes.
 24 Q And is that also true that that was,
 25 essentially, the end of the ventilation tasks?

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1 A Correct.
 2 Q And was that about, oh, three or four
 3 months after the warehouse fire?
 4 A Yeah. The fire was in April and this
 5 says it was July when I signed it.
 6 Q Okay. You didn't write this, actually
 7 sit down and type it; correct?
 8 A Correct.
 9 Q When it was provided to you, did you
 10 review it carefully?
 11 A I did.
 12 Q Did you understand that by signing
 13 your name to it, you were attesting that
 14 everything in it was -- reflected what you knew?
 15 A Correct.
 16 Q Did you ask for any changes to be made
 17 to it before you signed it?
 18 A I did. I don't remember what they
 19 were, to be absolutely honest with you.
 20 Q Okay.
 21 A I believe it was more of, I think I
 22 was listed as an FAO, and I wasn't.
 23 Q Okay.
 24 A It was some minor things like that, I
 25 believe.

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1 A Correct.
 2 Q Maybe a little bit later, did you work
 3 on getting a fan on?
 4 A I was never a part of a fan, that I
 5 can remember.
 6 Q Okay. Paragraph number 12, you didn't
 7 observe any action by Captain Mahler at the
 8 incident, to be abandoning the Truck 1 crew in
 9 an IDLH environment?
 10 A No, I did not.
 11 Q In fact, your recollection that
 12 Truck 1 left before Truck 8 left the interior of
 13 that building?
 14 A Correct.
 15 Q Paragraph number 15 states that,
 16 again, after you got that door open, The Truck 8
 17 crew was able to navigate and exit the structure
 18 multiple times, without danger, and no immediate
 19 concerns regarding your safety; that's a
 20 truthful statement?
 21 A Correct.
 22 Q And, then, paragraph 16, on the last
 23 page, says, If any captain that was your direct
 24 supervisor felt that the environment in the
 25 structure at the incident was putting anyone in

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1 true?

2 A Yes.

3 Q When you signed this, did you consult
4 the LFR management policies to see if there was
5 a specific policy or reference material --
6 reference?

7 A I didn't, no.

8 Q Did you assume that, that LFR
9 policies, somewhere, require that captains
10 remove their crews from situations that put them
11 in peril?

12 A Yes.

13 Q Based on your training, do you believe
14 that if a captain is in that situation, they
15 should report it to the incident commander?

16 A Yes.

17 Q Has Ms. Benson said things about you
18 that are untrue?

19 A Yes.

20 Q Can you tell me about that?

21 A I, at the time, had left Station 1, I
22 was doing my ALS Academy. There was one day I
23 was off-duty, my friends, we were going to go to
24 the lake, we decided to car pool, we met at
25 Station 1, we went to the lake, had a really fun

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1 everyone's interviews, and her accusing me of --
2 I believe, at one point --

3 MR. CORRIGAN: I'm sorry, did you
4 say, her accusing me?

5 THE WITNESS: Her?

6 MR. CORRIGAN: Yeah.

7 THE WITNESS: Amanda Benson was
8 the one that reported me.

9 MR. CORRIGAN: Okay. I'm sorry
10 to interrupt you. I didn't hear you.

11 Q (By Ms. Gutttau) You can continue.

12 A And when I had heard that there was an
13 accusation, I was asked to e-mail my battalion
14 chief the whole story, which I did, so...

15 Q When did this happen?

16 A It was sometime in July, I think.

17 Q Of 2021?

18 A Yes.

19 Q And you weren't on duty?

20 A No, I was not.

21 Q And you said you had drank during the
22 day --

23 A Yes.

24 Q -- but you weren't intoxicated at that
25 time?

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1 time, we were there for pretty much the entire
2 day, got back and there was a member that had
3 pranked us, Matt Woitalewicz had greased our
4 handle on our vehicle, so we had to go inside.
5 We weren't planning on going in, we weren't
6 planning on, really, communicating with anyone
7 there, but we went in, and that's when we ran
8 into the crew, Truck 1, Engine 1, and we all
9 started talking, talking about the day, talking
10 about how ALS Academy was going, and we just
11 kind of told them what we were doing at the
12 lake, and it was fun, and then we left. And,
13 then, later, I found out there was an accusation
14 that myself and another member were intoxicated
15 at the station. And then I was asked to, kind
16 of, write down what happened, and everyone that
17 was there at the table in the bay were all asked
18 to give statements, and they all agreed, we were
19 not intoxicated, which we were not. We did -- I
20 did -- I did admit to drinking that day, but I
21 said, because I was drinking, I had stopped
22 hours before even driving, because I knew I was
23 still on probation, and that's just something --
24 I wouldn't do that, you know. So, the whole
25 allegation came out, the whole getting

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1 A No.

2 Q And you said that was because you were
3 on probation. Why would it matter if you were
4 on probation?

5 A Well, I mean, probation, you're not
6 really protected by the Union, you're not, like,
7 you know, if anything happens while you're an
8 official employee, you have the backing of the
9 Union. And that's what I was told, like, you
10 know, if anything goes wrong, you can just be
11 fired like that, so that was my, my worry, you
12 know, just being safe and keeping your head down
13 until you pass your six months of probation.

14 Q Is your job important to you?

15 A Absolutely.

16 Q Is your reputation important to you?

17 A Of course, yes.

18 Q And do you feel like accusations that
19 you're drunk at the station impact your
20 reputation?

21 A Oh, yeah, absolutely.

22 Q Did Ms. Benson ever talk to you about
23 that incident and about reporting that?

24 A It wasn't until afterwards where I --
25 we were in the locker room, and she -- I can't

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1 they acknowledged that.
 2 Q And he would say those words "group
 3 supervisor"?
 4 A Yes.
 5 Q And "working for"?
 6 A Yes.
 7 Q Did anyone at all, that day, raise
 8 concerns about safety to you at that fire?
 9 A Nope, not to me.
 10 Q Did Captain Giles say something to you
 11 later in the afternoon?
 12 A He just -- He didn't say anything
 13 about safety, just said he was not concerned
 14 about that at the time, that there was a lot of
 15 smoke, and we needed to get the ventilation
 16 going.
 17 Q And was that at the same -- Captain
 18 Giles is on Engine 16; correct?
 19 A Correct.
 20 Q And was Engine 16 there at the same
 21 time that Truck 1 was there?
 22 A I believe so. I had left for a little
 23 bit, and they were there when I got back.
 24 Q Station -- Engine 16?
 25 A Engine 16 was, yes.

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1 alleging that Captain Mahler's actions could
 2 have killed her, Morgan Hurley and Matt Roberts;
 3 yes?
 4 A Yes.
 5 Q If she felt that way at this fire,
 6 what should she have done?
 7 A Communicated that with the incident
 8 commander, hit her Mayday button, let Safety
 9 know.
 10 Q To your knowledge, did she do any of
 11 those things?
 12 A No.
 13 Q You learned that, eventually,
 14 Ms. Benson, after that May 20 -- excuse me --
 15 After the May 26th meeting where Ms. Benson was
 16 informed that her -- all of her allegations
 17 against everyone were found to be unfounded, she
 18 filed a motion for an injunction; you're aware
 19 of this?
 20 A Yes.
 21 Q I'm going to ask you to look at City
 22 Exhibit, now, Number 1. And I'd like you to
 23 look at the second paragraph, and, I guess, just
 24 for the record, this is City's Exhibit R1, and
 25 this is Memorandum and Order from Judge Kopf,

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1 Q Okay. Did he speak to Ms. Benson at
 2 all?
 3 A Yes.
 4 Q When did you speak with her?
 5 A At one time, when they came out, her
 6 and her crew were standing outside, rehabbing,
 7 having some water, and I just, as I do with
 8 everybody, asked if everything was okay, if
 9 there's any injuries or issues.
 10 Q Do you know if that was shortly before
 11 they left?
 12 A I don't recall exactly.
 13 Q Okay. Is it part of the standard
 14 practice of the safety officer to ask captains
 15 if -- how things are going?
 16 A Yes.
 17 Q And do you solicit information about
 18 safety concerns?
 19 A Yes.
 20 Q And did you do that with Ms. Benson?
 21 A Yes.
 22 Q And did she tell you anything?
 23 A She told me no, no injuries, no
 24 issues.
 25 Q You understand that Ms. Benson is

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1 United States District Court for the District
 2 of Nebraska. And do you see in that -- in the
 3 second paragraph, the second sentence, would
 4 you just read that, where it starts with
 5 "For relief"?
 6 A "For relief, Benson requests, quote,
 7 that the Court, 1, order the City of Lincoln to
 8 immediately initiate disciplinary procedures
 9 against Mahler; 2, enjoin Mahler from
 10 assignment/dispatch to any fire scene during the
 11 pendency of the -- of disciplinary proceedings;
 12 and, 3, appoint an independent, third-party
 13 investigator to investigate plaintiff's
 14 complaint about Mahler's actions at the recent
 15 warehouse fire."
 16 Q So, do you read that second -- the
 17 second thing she's asking for, enjoin Mahler
 18 from assignment/dispatch to any fire scene
 19 during the pendency of the disciplinary
 20 proceedings, do you understand that to mean that
 21 she thought he was so dangerous he shouldn't be
 22 dispatched to any fires?
 23 A Can you repeat that? How do you want
 24 me to --
 25 THE ARBITRATOR: Why don't you

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1 A Correct.
 2 Q And that would have an adverse affect
 3 on her as well?
 4 A It could.
 5 Q Did you ever -- Were you ever
 6 interviewed by Ms. Gerdes?
 7 A Yes.
 8 Q Did she ever ask you about what Mahler
 9 told you between the dates of May 5th and
 10 May 26th?
 11 A I don't recall, specifically, what we
 12 talked about, but I gave her information on the
 13 fire, the safety officer and everything.
 14 Q But, specifically, about Mahler
 15 saying, I never talked to her, I didn't
 16 encounter her in the fire, did you give her that
 17 information?
 18 A I believe I probably would have just
 19 talked what I've already wrote down about
 20 meeting at the AB corner, whatever I knew about
 21 that.
 22 Q Your e-mail?
 23 A Yes.
 24 Q You think she had that?
 25 A I don't know if she got that or not.

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1 response.)
 2 (Reconnecting with the Arbitrator
 3 via telephone.)
 4 MS. GUTTAU: I didn't know if you
 5 heard us say, we think it probably is best to
 6 wrap up, because it'll take a little while yet.
 7 THE ARBITRATOR: All right. Why
 8 don't we just end there?
 9 MS. GUTTAU: Okay.
 10 THE ARBITRATOR: And we'll try
 11 again tomorrow.
 12 MS. GUTTAU: All right.
 13 MR. CORRIGAN: All right. Thank you.
 14 (At 3:50 p.m., the proceedings
 15 were continued to June 22, 2022.)
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1 I couldn't tell you that. I wasn't part of
 2 that.
 3 MR. CORRIGAN: Okay. Those are
 4 the questions I have.
 5 MS. LITTRELL: All right.
 6 THE ARBITRATOR: Any -- can we
 7 get done with Redirect, or are we going to
 8 shut 'er down?
 9 MS. LITTRELL: We may want to
 10 shut 'er down.
 11 MS. GUTTAU: Are you free
 12 tomorrow?
 13 THE WITNESS: Yes.
 14 MR. LITTRELL: Yeah, it may be
 15 best to do it tomorrow, and we can just do it
 16 all at once.
 17 Sir, is that okay?
 18 MR. CORRIGAN: It's like
 19 yesterday, it immediately shuts off.
 20 MS. GUTTAU: I think we lost you,
 21 Mr. Rutzick.
 22 I'm not sure you can hear us. If
 23 you can, we decided it's probably best to
 24 reconvene in the morning.
 25 THE ARBITRATOR: (No audible

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1 FEDERAL MEDIATION AND CONCILIATION SERVICE
 2 BEFORE ARBITRATOR STEVEN RUTZICK
 3 LINCOLN FIREFIGHTERS) FMCS CASE NO.
 4 ASSOCIATION, IAFF LOCAL) 22103-00847
 5 644, and AMANDA BENSON,)
 6)
 7 Grievants,)
 8)
 9 vs.) VOLUME III
 10) PAGES 556-830
 11 CITY OF LINCOLN,)
 12)
 13 Respondent.)
 14)
 15)
 16
 17 ARBITRATION HEARING held before
 18 Arbitrator Steven Rutzick (via Zoom), with
 19 Denise J. Lukasiewicz, CCR and Notary Public for
 20 the State of Nebraska, counsel and all parties
 21 present at the LFR Union 644 Hall, 241 Victory
 22 Lane, Lincoln, Nebraska, beginning at 9:07
 23 a.m., on the 22nd day of June, 2022.
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A P P E A R A N C E S

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ALSO PRESENT: Mr. Ryan Moser, Vice President
IAFF Local 644; Mr. Dave Engler, Fire Chief;
Tiffany Leasure, Paralegal for City of Omaha

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2	* All exhibits offered with objections to Union's 101, 102, 103, 147, 149, 150; and City Exhibits 20, 21, 38, 46, and 47
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4	* Union Exhibit 149 was offered and received on page 142
5	* Union Exhibit 150 was offered on page 143 and received on page 144
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7	* Union Exhibit 156, Telephone Log Activity, was marked on page 750
8	* City Exhibit 156, E-mail to Aishah from Mahler, was marked on page 1738
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10	* City Exhibit 50 was marked on June 22nd, 2022, offered and received on page 571
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<p style="text-align: right;">Page 569</p> <p>1 (On June 22, 2022, at 9:07 a.m., 2 the proceedings continued as follows:) 3 THE ARBITRATOR: Let's begin. 4 MS. LITTRELL: Good morning. 5 We're going to resume with Redirect of Mike Smith. 6 THE ARBITRATOR: Okay. All 7 right. Mr. Smith, you're still under oath. 8 THE WITNESS: Yes. 9 REDIRECT EXAMINATION 10 BY MS. LITTRELL: 11 Q All right. Chief Smith, I'm going 12 to ask you to flip between a few different 13 documents here, so you've got the big binders in 14 front of you. First, that one that you've got 15 in your hand there, I'd like you to go to 16 Exhibit 146, this is Union 146, and can you tell 17 me what this document is? 18 A It states here, "Lincoln Fire & Rescue 19 Best Practices." 20 Q And is it "Best Practice 2, 21 Division/Group Supervision"? 22 A Yes. 23 Q I'd like you to turn to page 17 of 24 that exhibit, and the numbers are in the lower 25 right-hand corner.</p>	<p style="text-align: right;">Page 570</p> <p>1 A (Witness complied.) 2 Q Under "Decision Points," I'd like you 3 to read into the record the sentence that starts 4 with "A Mayday," and read all the way, just the 5 first two sentences there. 6 A "A Mayday can occur at any time during 7 the incident and every firefighter on scene is 8 encouraged to call for help any time he/she 9 perceives trouble. Additionally, crew members 10 and especially division/group supervisors should 11 be proactive in calling for a Mayday early if 12 accountability is lost, a collapse occurs, or a 13 firefighter becomes disoriented." 14 Q So according to this Best Practice, is 15 a firefighter only to call Mayday if she 16 absolutely is certain that she's in a dire 17 situation, or does LFR encourage that she call 18 if she even perceives trouble? 19 A We would encourage if they perceive 20 trouble. 21 Q Is becoming disoriented trouble? 22 A Yes. 23 Q So now we're going to flip to City's 24 exhibits and what is marked R50, so, Exhibit 50. 25 A Did you say 50?</p>
<p style="text-align: right;">Page 571</p> <p>1 MS. LITTRELL: And Mr. Rutzick, 2 this is what was e-mailed this morning to you. 3 THE ARBITRATOR: All right. 4 MS. LITTRELL: And Mr. Corrigan 5 produced this document yesterday, but I 6 don't think it was offered, so I would offer 7 Exhibit 50. 8 MR. CORRIGAN: No objection. 9 THE ARBITRATOR: Received. 10 Q (By Ms. Littrell) Mr. Smith, what is 11 Exhibit 50? 12 A The Fire & Rescue Fireground RIT, 13 R-I-T, Management Policy, 855.02. 14 Q And is this the Mayday and emergency 15 traffic -- 16 A Yes. 17 Q -- policy? 18 A Yes, correct. 19 Q I'd like you to read, under 20 "Procedure" paragraph big 'I' "Mayday," just 21 what appears in that one sentence under 22 "Mayday"? 23 A "Used for actual or potential peril to 24 firefighters and can be called by the person 25 affected or someone witnessing the event. A</p>	<p style="text-align: right;">Page 572</p> <p>1 Mayday can be declared by anyone." 2 Q And, so, again, is this policy, does 3 it require that there always be an actual 4 immediate, dire emergency to call the Mayday? 5 A No. 6 Q And are firefighters and all crew 7 members required to call, or encouraged to call, 8 if there's even the potential for peril? 9 A Yes. 10 MR. CORRIGAN: I'm sorry, I'm 11 going to object to the form of the question. 12 MS. LITTRELL: Okay. I'll restate. 13 THE ARBITRATOR: All right. 14 Q (By Ms. Littrell) Is a call notifying 15 the team that there is potential for peril a 16 Mayday call? 17 A Can you repeat that? 18 Q A firefighter can hit Mayday, can make 19 a Mayday call, if they perceive a potential for 20 peril; correct? 21 A Correct, correct. 22 Q And then, under that, there's a list 23 of examples of Mayday. 24 A (Witness indicating.) 25 Q And Number 5, will you read what</p>

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1 firefighter on-scene, employee, for that matter,
 2 whether you're on a medic unit, an engine, a
 3 truck or a battalion chief, that is when you
 4 assume command, so Truck 5 was the first one on
 5 location, he assumed command. He might have
 6 made Engine 5, gave them an assignment, and
 7 then -- and, then, when I got there, I assumed
 8 command from Truck 5 and he could join his crew.
 9 Q And so you became the incident
 10 commander --
 11 A Correct.
 12 Q -- just a few seconds after you
 13 arrived?
 14 A Correct.
 15 Q And did you remain incident commander
 16 throughout the end of it?
 17 A I did not.
 18 Q When did your time as incident
 19 commander end?
 20 A I would say, maybe -- it was into the
 21 afternoon, four or six hours later.
 22 Q Okay. And was the fire still
 23 smoldering then?
 24 A Yes.
 25 Q Somebody else took over, then?

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1 hydrated?
 2 A Right.
 3 Q Okay. So explain to me, then, when
 4 you became incident command, like, where do you
 5 locate yourself at the fire, and where do you
 6 sit in conjunction to the warehouse and that
 7 type of thing?
 8 A I located on this fire, there was two
 9 overhead doors, we'll call that the Alpha side,
 10 that's the south side, and I think that is in
 11 between, right behind Truck 5 and right in front
 12 of Engine 5, so I had a clear vantage point of
 13 the south side of the structure.
 14 Q And you said two doors were open?
 15 A Two overhead doors.
 16 Q And could you see in the doors?
 17 A Yeah, I could see in both of them.
 18 They were open all the way.
 19 Q What was on the opposite side? Were
 20 there walk-through doors, if you recall?
 21 A I didn't learn that there was only
 22 walk-in doors until later on in the fire. I
 23 assumed there was an overhead door over there,
 24 but there wasn't, it was just, basically, just
 25 one exit door.

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1 A Yes, Chief Smith took over.
 2 Q What is your role as incident command?
 3 A That is when you develop a strategy
 4 and you make assignments, you look at the
 5 priorities that you need done, and who's going
 6 to complete those assignments. That's your --
 7 that's your basic role, you're calling for
 8 more resources, like this one here was very
 9 resource-intensive, we're going to be there
 10 quite a while.
 11 Q And does the length of the fire, just
 12 because it lasted a long time, did it make it
 13 especially dangerous, or how would you
 14 characterize that?
 15 A Not dangerous due to, like, a hostile
 16 fire event, but I wouldn't even say dangerous
 17 for a physical. At that time, it was a very
 18 warm day, so, rotating crews without working
 19 them too hard, that was -- that was the struggle
 20 for the day was, was trying to maintain proper
 21 workload, where you get the most out of your
 22 crews, yet not work them too much, and then, on
 23 the backside, trying to get other crews in, in
 24 time to relieve them.
 25 Q So try and keep everybody rested,

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1 Q Okay. And how many overhead doors, if
 2 you recall -- And, actually, let's turn to the
 3 photos. So, if you want to grab the other
 4 binder.
 5 MS. GUTTAU: So, sir, I'm going
 6 to move to -- so, it would be the other black
 7 binder -- City Exhibit 16.
 8 Q (By Ms. Gutttau) And 16 is some
 9 photographs, if you want to flip back to those.
 10 So we are on City Exhibit 16, and, first, I'd
 11 ask to turn to page 3 of that, the aerial view,
 12 so we're on the aerial view, page 3 of
 13 Exhibit 16.
 14 So as you're -- can you explain on here,
 15 you said -- which side did you arrive at?
 16 A I came in off of 48th Street.
 17 Q Which is where, 'A,' 'B,' 'C,' 'D'?
 18 A 'B'.
 19 Q And where did you set up your incident
 20 command location?
 21 A That was on the Alpha side, not quite
 22 halfway down, a third.
 23 Q And about how far from -- When you set
 24 up incident command, where -- what are you --
 25 are you sitting in a truck, or what are you

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1 turn your truck on, then the radio resets, so
2 you don't always hear that. That's fairly
3 common. And, then, early on, they called for a
4 second alarm, and that's about the time Truck 8
5 showed up, so I just kept them there because we
6 were going to have work to do.

7 Q Okay. Describe when you first got
8 there. When you looked in the building, can you
9 describe the smoke conditions when you first
10 arrived?

11 A Yeah, I had smoke coming out the open
12 overhead doors, and it was light brown smoke, it
13 was light brown in color, but I describe it as
14 it doesn't have a lot of energy, so it didn't
15 have the heat to come out to the atmosphere and
16 then go straight up, it was just kind of wafting
17 out the door, it didn't have a whole lot of
18 movement to it.

19 Q And, so, for a non-firefighter and
20 lawyer that knows nothing about fires, what do
21 you mean "energy," like, can you describe that a
22 little more?

23 A Hot air rises, so when you have fire,
24 or smoke that is pushed by fire and it's -- and
25 it's super heated, when that gets to an area

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1 where it can rise up, it'll go up at a high rate
2 of speed.

3 Q And you didn't observe that here?

4 A We did not have that here.

5 Q When Ms. Benson arrived, do you know
6 who was on her crew?

7 A Yeah, it would have been Matt Roberts
8 and Morgan Hurley.

9 Q And, to your knowledge, was Matt
10 Roberts an experienced firefighter?

11 A Yes.

12 Q Describe his skill level, is he -- how
13 is he as a firefighter?

14 A He was (sic) a very good firefighter.
15 He was on Engine 1, which was busy, and then
16 Engine 3, which is also very busy, they get the
17 bulk of our fires. He had (sic) a lot of
18 experience. And, then, as a driver, he was
19 (sic) one of the best that I've had.

20 Q Uh-huh. And he told us, he testified
21 earlier, he was FAO; correct?

22 A Yes.

23 Q And that usually FAOs stay outside the
24 building in a lot of fires; is that correct?

25 A That's correct.

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1 Q However, in this fire, in this
2 warehouse fire, he went -- he was in the
3 building with his crew; correct?

4 A Correct.

5 Q Okay. Do you know why that was?

6 A Yeah, he, he -- since Amanda was
7 acting captain and had a recruit, I think Matt
8 took it upon himself, what he told me, he took
9 it upon himself to go in and just help out.

10 Q Yep. And do you know Morgan Hurley?

11 A Yes.

12 Q And I know she's fairly new. Is she a
13 good firefighter, though?

14 A Yeah, comparable with a recruit at the
15 time, she had a lot of, you know, natural skills
16 and ability, and she did a good job.

17 Q As acting captain, was Benson
18 responsible for her T1 truck crew safety?

19 A Yes.

20 Q Do you know who was on Captain
21 Mahler's crew?

22 A Yes, Jason Love, Trent Borchers, and,
23 I believe, Steve Dyer was also there --

24 Q Okay.

25 A -- assigned to Truck 8.

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1 Q And they arrived a little bit after
2 Truck 1; correct?

3 A Correct.

4 Q Okay. And you said earlier, Captain
5 Mahler, is a good firefighter, has good
6 firefighting skills?

7 A Yes.

8 Q Have you ever seen Captain Mahler
9 endanger anyone at a fire?

10 A No.

11 Q Do you believe he would ever do that?

12 A No.

13 Q Have you listened to the recordings
14 since the fire?

15 A Yes.

16 Q Okay. When was -- when did you first
17 listen to it after this all, kind of -- after
18 the fire, when was the first time you listened
19 to it?

20 A I don't have an exact date, but it
21 would be the middle to the end of May.

22 Q Okay. When you arrived, could you
23 see, when you were looking in the doors on the
24 Alpha side, could you see firefighters inside?

25 A Yes.

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1 he has, but it compresses it down, so there's,
 2 you know, it eliminates the gaps, for size.
 3 Q So it may not be a real-time, it
 4 eliminates the waiting gaps in between?
 5 A Correct.
 6 Q Okay. So as the transcript is
 7 written, it's not like these conversations are
 8 going on constantly, in one, long flow?
 9 A Correct, it's broken.
 10 Q Okay. All right. And that would be
 11 reflected in the original audio that might show
 12 that, or have time-stamps?
 13 A Time-stamps, yeah.
 14 Q Okay. Thank you. So you assign
 15 Mahler's crew, you said, to -- first, to what,
 16 utilities?
 17 A Utilities.
 18 Q What's that mean?
 19 A Control the electricity. We had water
 20 flowing on a compactor, high electricity, high
 21 hazard.
 22 Q Okay. You wanted to make sure nobody
 23 got shocked?
 24 A Yep.
 25 Q Were the sprinklers going in the

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1 A Correct.
 2 Q Okay. So, let's talk about, let's
 3 look at that on -- if you want to turn to -- so
 4 it's going to be pages we'll call sheets here,
 5 so it's going to be on sheet number -- let me
 6 find it here. Sheet number 3, and it's going to
 7 be depo -- or transcript page 9.
 8 A Okay. I've got 3 of 16, is that what
 9 you're looking at?
 10 Q That's correct.
 11 A Okay.
 12 Q So, in the top left quadrant is page 9
 13 of the transcript, and it states there, Mahler
 14 says, "Truck 8 to Command, you've got heavier
 15 smoke conditions to the west end of the
 16 building, west end of the building," and what do
 17 you say?
 18 A "Clear."
 19 Q And then Benson says, "Truck 1 to
 20 Command, we're going to need some sort of
 21 ventilation in here." So she's in there at that
 22 time?
 23 A Yes.
 24 Q Okay. And what do you respond?
 25 A I said "clear," and then reassigned

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1 warehouse?
 2 A Yes.
 3 Q Did Mahler complete, or report back on
 4 utilities, if you recall?
 5 A Yeah, there was several back and
 6 forth, because we had management there, their
 7 maintenance, so we got Truck 8 into the correct
 8 door, the location, but, yeah, he reported back.
 9 Q Okay. And, then, what assignment did
 10 you give Truck 8 next?
 11 A I believe it was to open up some
 12 overhead doors, ventilation.
 13 Q Okay. Tell me what -- ventilation,
 14 some of these terms sound kind of fancy, but can
 15 ventilation just be opening up a door?
 16 A Yeah, that's -- ventilation can be
 17 opening up a door, cutting a hole in the roof,
 18 or taking a window.
 19 Q We'll also hear -- or talk about
 20 people being assigned fire attack, what's that
 21 mean?
 22 A Fire attack is advancing a hose line
 23 to the seed of the fire.
 24 Q Okay. So you assigned Truck 8, then,
 25 to open an overhead door?

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1 Truck 8 to ventilation.
 2 Q Okay. "Command to Truck 8, I'm going
 3 to reassign you to ventilation?"
 4 A Correct.
 5 Q And then Wright, who is Wright, I
 6 guess, in the next entry?
 7 A Mike Wright, he's the captain of
 8 Truck 5 C shift.
 9 Q And "Truck 5 to Command," he says, "If
 10 we can get a door on the Charlie side open, in
 11 close proximity of the fire, that would be
 12 good," and you respond how?
 13 A I asked, "Truck 8, can you make that
 14 happen?"
 15 Q And Mahler responds, "Truck 8 is par 3
 16 interior." What's that mean?
 17 A That means he is inside the building,
 18 but I also knew that he was inside the
 19 electrical room, not inside the fire room.
 20 Q Okay. He was in the smaller
 21 electrical room?
 22 A Correct.
 23 Q And he'll say, he goes, "We'll be
 24 delayed to get the roof -- to the roof, or
 25 whatever you need for vent." And you respond?

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1 A "Truck 8, repeat, you got electrical
2 shut off."

3 Q And then he confirms electrical is
4 off?

5 A Correct.

6 Q And then it says -- You say, after
7 that, what do you say? And it goes -- I'll tell
8 you, it goes over, then, to 10 is on the right
9 side, at the top there.

10 A I ask Truck 8 if he can get a door
11 open.

12 Q Okay. "Can you get a door open?" And
13 then Benson says, "Truck 1 to Command, would you
14 like us to assist with ventilation"; is that
15 correct?

16 A Correct.

17 Q And how do you respond?

18 A "Yeah, if you can -- if you can
19 hook up with Truck 8, you can assist with
20 ventilation, getting one of the doors open."

21 Q And she responds, "Clear"?

22 A "Clear."

23 Q Okay. And, so, in doing that, in her
24 asking to assist with something, do you know if
25 she completed the extension task that you'd

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1 given her at that time?

2 A I don't recall if I had enough
3 information where I didn't need that anymore or
4 if she reported back.

5 Q Okay. Do you know if it's recorded in
6 here that she had completed that?

7 A I don't know that.

8 Q Okay. If she had, should she report
9 that to you --

10 A Yes.

11 Q -- on the -- on the recording?

12 A Yeah, yeah.

13 Q Okay. When, when you assigned,
14 earlier, on page 9, when you assigned Mahler to
15 ventilation, reassigned to ventilation, did that
16 make him a group supervisor over anybody else
17 doing ventilation?

18 A No.

19 Q In fact, had group -- had Truck -- or
20 E5 -- or Truck 5 been doing ventilation first?

21 A Truck 5 was working on ventilation
22 also.

23 Q And who was that captain?

24 A Mike Wright.

25 Q Okay. And, so, when you assigned --

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1 When you reassigned Mahler to ventilation, even
2 though Truck 5 had already been assigned to it,
3 then, was Mike Wright the group supervisor over
4 ventilation?

5 A No.

6 Q Okay. Was Captain Mahler ever
7 reporting to Mike Wright as a result of that
8 assignment?

9 A No.

10 Q And so, then, you -- On page 10,
11 Benson asked to assist with ventilation;
12 correct?

13 A Correct.

14 Q And you say, "Yes, you can assist with
15 ventilation." What is "assist with"?

16 A Assist means you're doing the same
17 task, but separate, so Truck 8 was on the
18 Charlie side, Truck 1 was on the Alpha side,
19 interior, but we did an overhead door, there's
20 several overhead doors to be opened. Truck 8
21 initially was Charlie side, north side, to open
22 a door over there, and, then, either Amanda
23 would be on the south side with Truck 1 --

24 Q Okay.

25 A -- to try to get some doors open, or

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1 the possibility could be she could go to the
2 Charlie side and open up. There's no set
3 assignment of where Truck 1 could operate, or
4 Truck 8, for that matter.

5 Q Okay. What kind of doors were on the
6 Charlie side?

7 A Well, myself and Truck 5 were both
8 hoping for, since we didn't see it, we were
9 hoping for an overhead door, and that could
10 allow a clear path to just go straight through,
11 but what we had was just a walk-in door.

12 Q Okay. And, so, when you say -- you
13 said, yes, you can assist with ventilation
14 getting one of those doors open, did you then
15 make -- did that wording make Captain Mahler the
16 group supervisor of ventilation?

17 A No.

18 Q Did it make him the supervisor over
19 Truck 1 and Benson?

20 A No.

21 Q If Truck 5 was actually the first one
22 assigned to ventilation, then, logically,
23 would -- does that mean that if, if the "assist
24 with," does that mean that Truck 5 was the group
25 supervisor, then, over Benson?

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1 THE ARBITRATOR: I did not. Say
2 it again. Go ahead.
3 MR. CORRIGAN: Did you hear the
4 question?
5 MS. GUTTAU: Did you hear the
6 question?
7 THE ARBITRATOR: No, I didn't
8 hear the question. I'm sorry.
9 MS. GUTTAU: No, that's fine. I
10 forgot how I stated it, do you want -- Let me
11 try restating it.
12 THE ARBITRATOR: Thank you.
13 Q (By Ms. Gutttau) If, if somebody -- If
14 a firefighter -- strike that.
15 If Benson did not notify Mahler that she
16 was leaving, would that suggest to you, in your
17 experience, that she was not treating him as her
18 supervisor?
19 A I would agree with that.
20 Q Did anybody -- We talked about Chief
21 Smith. Did anybody else raise any safety
22 concerns to you, during the warehouse fire,
23 while Benson and Mahler were present at the
24 fire?
25 A No.

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1 Q Either way, does she report to you
2 that Captain Mahler had endangered her?
3 A No.
4 Q Did she report to you having any
5 issues exiting the structure?
6 A The only issue that -- Nothing for
7 exiting the structure. The only issue that was
8 reported is Shawn wouldn't, wouldn't talk to
9 her, and then she had to track him down, that
10 was the only issue reported.
11 Q Okay. Did she indicate to you --
12 MS. GUTTAU: Oh, yep.
13 THE ARBITRATOR: Hold on. When
14 did she -- when did she talk to you about saying
15 he wouldn't talk to her?
16 Q (By Ms. Gutttau) When did she tell you
17 that?
18 A That was -- I was inside the fire car,
19 and that was after her second tank, so we're
20 probably an hour and a half into this, I think
21 it was right before Truck 1 was returning to
22 service.
23 MR. CORRIGAN: Just to clarify,
24 when you say "return to service," do you mean --
25 MS. GUTTAU: Back to the station.

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1 Q Okay. Did Benson come talk to you
2 during or after the fire?
3 A Yes.
4 Q Okay. Did she ever -- Was it during
5 or --
6 A It was during the fire, and it was --
7 I believe she was assigned to rehab, and then
8 close to being returned to service.
9 Q Okay. What's "rehab" mean?
10 A Get some water, take your gear off,
11 cool down.
12 Q And what is return to service?
13 A Returning to quarters.
14 Q Have some rest?
15 A Yeah, you're leaving the fire scene.
16 Q Okay. Do you know about what time
17 period -- Did you talk to her about that after
18 they exited the second time?
19 A Yeah, I would say that Truck 1
20 probably was after their second SCBA bottle,
21 their air, and so it was late, later into the
22 fire.
23 Q Okay. So it might have been after
24 they exited the third time?
25 A Correct.

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1 MR. CORRIGAN: -- going back to
2 the station?
3 THE WITNESS: Back to Station 1.
4 MR. CORRIGAN: I'm sorry to
5 interrupt.
6 MS. GUTTAU: No, nope, that's
7 fine.
8 THE ARBITRATOR: So you're
9 saying -- hold on. During the event, when I say
10 "the event," the fire event, she did tell you
11 that Mahler did not speak with her; is that
12 correct?
13 THE WITNESS: The only -- the
14 only thing that was brought up on the fireground
15 is, Amanda and I were talking, and kind of a
16 little bit of a smile on her face, and she said,
17 I couldn't get him to talk to me. So it's,
18 like, well, what do you mean, and I responded
19 back that, well, when he was coming in, you
20 know, he's going to work, so it's not a real
21 chatty environment. And, at that point, she
22 said that she said something to Shawn and he
23 kept walking, so then she had to take a -- kind
24 of catch up to him, and then he replied back of
25 closing overhead doors, or he responded before

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1 he went in, Mahler responded before he entered.
 2 THE ARBITRATOR: Okay. And was
 3 she telling you this on the radio or was she
 4 talking to you person-to-person?
 5 THE WITNESS: This was
 6 face-to-face, I was inside the fire car
 7 and Amanda still had her gear on, and I
 8 believe the rest of the crew was in rehab,
 9 and then she was getting ready to put her gear
 10 back, gather tools, and return to service. So
 11 she was standing outside the, the pickup door.
 12 THE ARBITRATOR: Okay. Thank you.
 13 MS. GUTTAU: Thank you.
 14 Q (By Ms. Guttau) Before that, so at
 15 least we know that they've been in and out a
 16 second time, at least, when you had this
 17 conversation?
 18 A Correct.
 19 Q So had she exited -- she, Truck 1,
 20 exited, at that point, even before Truck 8?
 21 A They did, but I was not aware that she
 22 was in there and then followed Truck 8 back in.
 23 Q Okay. And, then, when they exited,
 24 though, after that, do you know if Truck -- do
 25 you recall if Truck -- Benson and Truck 1 exited

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1 serious enough to have killed or injured
 2 anybody?
 3 A No.
 4 Q And nobody raised any safety concerns
 5 to that effect to you during that fire while
 6 they were there?
 7 A No.
 8 Q And when I say "they," I mean Mahler
 9 and Benson; do you understand that?
 10 A Correct, yeah.
 11 Q So you have this conversation before
 12 she goes back to return to service, which means
 13 go back to the station for rest?
 14 A Correct.
 15 Q Did not mention that her life was in
 16 danger?
 17 A There was no mention of that.
 18 Q Would you expect, as incident
 19 commander, for that to be reported to you?
 20 A Yes, either me or Chief Smith, one of
 21 us for sure.
 22 Q Okay. And you said Chief Smith never
 23 reported anything like that to you?
 24 A No.
 25 Q When was the first time, then, that

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1 first?
 2 A Yes, Truck 1 came out because they had
 3 a low air alarm for Matt Roberts.
 4 Q And Truck 8 and crew was still inside?
 5 A Correct.
 6 Q Okay. And did you observe at all, the
 7 second time she exited -- Did you observe that,
 8 Truck 1 exit the second time?
 9 A I, I can't say if I saw her come out
 10 or noticed it, or --
 11 Q Okay. That's fine.
 12 Nobody notified you of any issues
 13 regarding difficulty exiting the building?
 14 A No, no.
 15 Q Did they, at any time during that
 16 fire, while Benson and Mahler were there?
 17 A No.
 18 Q Were you ever made aware of
 19 conditions -- You're aware that Ms. Benson has
 20 alleged that Mahler abandoned her in the
 21 warehouse in dangerous conditions that could
 22 have killed or injured her?
 23 A Yes.
 24 Q Were you aware of any conditions, at
 25 any time while they were there, that were

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1 you learned that Ms. Benson was claiming that
 2 Shawn Mahler abandoned her in a dangerous
 3 warehouse in which she could have died or been
 4 injured?
 5 A I don't have an exact date I can come
 6 up with, offhand. There was some communication,
 7 but I -- I was aware that Shawn didn't talk to
 8 her, but when you use the term "abandon," you
 9 know, injured and killed, that was -- that was
 10 much later on, that was prior to the next set, I
 11 think is when it was.
 12 Q Okay. So that was never initially --
 13 those words were never --
 14 A No.
 15 Q -- reported to you --
 16 A No.
 17 Q -- by her?
 18 A No.
 19 Q Okay. So let's talk about when she
 20 returns to the station, that's Station 1;
 21 correct?
 22 A Correct.
 23 Q As acting -- Do you know when you went
 24 back to Station 1 that evening?
 25 A I left the fire scene and went

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1 straight to Station 1. It was still daylight
2 out, it was 8, 9 o'clock at night.

3 Q And do you know if she was there at
4 the same time?

5 A Yeah, I believe they had all their --
6 they were all cleaned up and put back in
7 service, ready to go on another call.

8 Q How late were you there that evening,
9 if you recall, approximately?

10 A I'd have to look, but it was
11 8, 9 o'clock, somewhere around there.

12 Q Okay. And did their -- Benson and
13 Truck 1 shift would end the next morning at 7?

14 A Correct.

15 Q And so when you got back to the
16 station, did Ms. Benson ever report to you that
17 Mahler had abandoned her in dangerous
18 conditions?

19 A No.

20 Q Okay. Never reported that her life
21 was in danger?

22 A No.

23 Q When did she first report that he --
24 When did she first raise a complaint, then, to
25 you about it?

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1 had escalated?

2 A Correct.

3 Q Okay. So, let's turn to R10 -- one
4 second. I want to look at, first, R --

5 THE ARBITRATOR: Where are you?

6 MS. GUTTAU: One second, I'm
7 trying to find the right number. That one I
8 didn't write down.

9 THE ARBITRATOR: Okay.

10 MS. GUTTAU: Okay. So I want to
11 look, first, at Exhibit 15. I'm going to be on
12 Exhibit 15.

13 THE ARBITRATOR: That's your
14 exhibit; correct?

15 MS. GUTTAU: Yes, City Exhibit R15.

16 THE ARBITRATOR: Got it.

17 MR. CORRIGAN: Is the Prime
18 report?

19 MS. GUTTAU: No, it's her
20 complaint of May 5th.

21 Q (By Ms. Guttau) Do you know what
22 Exhibit 15 is?

23 A Yeah.

24 Q Okay. What is that?

25 A That is her documentation of the

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1 A I believe that was when I received an
2 e-mail, that might have been the Wednesday of
3 the following set.

4 Q Backing up a minute. Based on your
5 role as incident commander, and after listening
6 to the recording and being present at the fire,
7 do you believe Ms. Benson's accusation that
8 Captain Mahler abandoned her and her crew in a
9 dangerous warehouse that could have killed or
10 injured them, do you believe that's a false
11 accusation?

12 A Yes.

13 Q So then we talk about she submitted
14 a -- or talked to you about a complaint. Do you
15 know if she called you first?

16 A We talked about -- So it kind of -- it
17 kind of changed from the warehouse, so, that
18 night, after -- it was Battalion 1's office, it
19 was brought up that she couldn't talk to Shawn,
20 but this injured or killed comment and the
21 seriousness changed from that conversation to
22 Kelly days, and then it was safety injunction
23 and --

24 Q So when you say Kelly days, so it was
25 about a week later was the first time that it

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1 cardboard fire.

2 Q Did you have a conversation with her,
3 before that, about the fire?

4 A Yeah.

5 Q Okay. And tell me about that
6 conversation, what you recall.

7 A I believe there was some text messages
8 over Kelly days on that, but this was in
9 Battalion 1's office, probably the night of --
10 the evening of the fire, and, you know, that --
11 it was brought up that she had a lawsuit against
12 Mahler, and, then, you know, that was her
13 concern, going way back to the start of the
14 lawsuit that there was, Shawn was going to hurt
15 her at a fire, so that is, you know, she always
16 had that concern, going back to 2016.

17 Q And she told you that?

18 A She told me that, yeah.

19 Q Okay. And what else do you recall
20 about that conversation?

21 A We talked a little bit -- Well, we
22 talked about the fire conditions there. It
23 seemed to be, like -- (unintelligible) --

24 THE COURT REPORTER: Say that
25 again.

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1 of 2021, where she had been at the lake and
2 showed up at the fire station after that. Do
3 you have any idea what I'm talking about?

4 A Yes.

5 Q What do you know about that? What
6 happened?

7 A It was Morgan Hurley and Karen Kelsey
8 were the two. I think they were on probation or
9 new -- or just right off probation. They parked
10 at Station 1, they went out and went boating for
11 the day, and then picked up their cars, whenever
12 it was, 7-ish at night. And then Amanda
13 reported to me that she could smell alcohol, and
14 this all happened at the table downstairs on the
15 app floor at Station 1, and I was down there for
16 part of that, and I did not see any signs of
17 alcohol by either one of those two.

18 Q Did Amanda make a complaint to you
19 about it?

20 A Yeah.

21 Q In what form?

22 A That it was wrong that those two were
23 coming in, and intoxicated, and, and there
24 was -- just that they came in to talk to Matt
25 Woitalewicz.

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1 well.

2 Q Did they give it to you?

3 A Yeah.

4 Q But Amanda didn't put any -- anything
5 in writing to you saying that I -- I'm
6 complaining there was misconduct by another
7 firefighter, did she?

8 A I, I don't think I received anything
9 in writing, I -- I don't remember reviewing any
10 of this, anything that came up, either.

11 Q So you asked Hurley to document it.
12 Was there anybody else that you asked to
13 document it, that you can recall?

14 A I know I asked Cole Henn. And I, I
15 don't remember if, if Mark Majors, if he had any
16 documentation on that or not.

17 Q What about Woitalewicz?

18 A I don't think I asked Woitalewicz to
19 document anything either.

20 Q Did you tell Benson to document it?

21 A No, I was confident that this was
22 going to be documented without telling her to
23 document it.

24 Q Did she mention anything about any
25 animosity towards Ms. Hurley at the time,

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1 Q And did she, like, send you an e-mail
2 complaining about it, or how did you become
3 aware of it?

4 A No, there was -- I don't think there
5 was an e-mail on that one.

6 Q She verbally talked to you about it?

7 A Yeah, she didn't like that, that
8 Morgan came in and was drinking.

9 Q So -- And did you confront Morgan
10 about it and tell her that Amanda had made a
11 complaint against her?

12 A I don't know if I used the word
13 "complaint," but I asked for Morgan to -- and
14 others -- to document that event before it got
15 too far away.

16 Q Did you talk to Morgan about it?

17 A Yeah, I believe I talked to her in
18 person to send me something by e-mail.

19 Q Did she do that?

20 A Yeah.

21 Q And she denied having consumed
22 alcohol, or been intoxicated?

23 A She denied -- well, yeah. Then even
24 put in there that both of them drove home. And
25 I asked others for documentation on that as

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1 meaning Ms. Benson?

2 A Say that again.

3 Q Did Ms. Benson say that she had any
4 animosity against Ms. Hurley at that point in
5 time?

6 A No.

7 Q And there was some discussion about,
8 in your report in Exhibit 10, about the -- using
9 the term "assist with" would not connote placing
10 under supervision; do you remember that?

11 A Yes.

12 Q Either before this fire in April
13 of 2021, or after that -- thereafter, did
14 you ever receive any communication from the
15 fire department that they wanted people
16 to discontinue using this term in -- on
17 firegrounds?

18 A Yeah, Chief Engler addressed it, that
19 we need to go away from using the word "assist."
20 And, then, I believe that word is still in the
21 policy right now, and so it's still being used
22 today, so we haven't -- I don't know if there's,
23 really, another word that we could use, because
24 we've been using it for so long, for assist,
25 it's, like, "assist" means "assist," so that's

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1 witnessed her always performing at a high level;
 2 right?
 3 A Correct.
 4 Q You wrote, (as read), When Amanda
 5 assigned -- is assigned a task, I have
 6 confidence that she will get it done and that it
 7 will be done on time or early.
 8 A That's correct.
 9 Q And she got an overall ranking of 94
 10 out of 100; right?
 11 A Correct.
 12 Q And her pay increase was approved?
 13 A I don't know if this was a merit raise
 14 or not, but it would have been approved if it was.
 15 Q Well, do you see -- if look at the pay
 16 action box below your signature --
 17 A Okay.
 18 Q -- and it says, pay increase approved,
 19 and that's checked?
 20 A Correct.
 21 Q And that was just a few days -- 12
 22 days after she had told you in an e-mail that
 23 she felt like she'd been abandoned by Mr. Mahler
 24 at a fire?
 25 A Correct.

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1 A Yes.
 2 Q And after talking to everybody else,
 3 or receiving information, and based on your
 4 knowledge, concluded that accusation to be
 5 untrue?
 6 A That was untrue.
 7 Q And Morgan was not intoxicated at the
 8 station?
 9 A No.
 10 Q You mentioned to -- Mr. Corrigan asked
 11 you "assist with," you were talking about the
 12 term "assist with," and you said it's still used
 13 today?
 14 A Yes.
 15 Q Just used yesterday, you said?
 16 A Correct.
 17 Q Do you know of anyone else, in all of
 18 your years, who believed that the term "assist
 19 with" created a group supervisor?
 20 A No one.
 21 Q Has anyone else, to your knowledge,
 22 been confused by that term as to who (sic) the
 23 group supervisor was?
 24 A No.
 25 Q If Ms. Benson is claiming she was

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1 MR. CORRIGAN: I don't have any
 2 other questions.
 3 MS. GUTTAU: May I proceed with
 4 Redirect?
 5 THE ARBITRATOR: Yep.
 6 MS. GUTTAU: Okay. Thank you.
 7 THE ARBITRATOR: Go ahead.
 8 MS. GUTTAU: Thank you.
 9 REDIRECT EXAMINATION
 10 BY MS. GUTTAU:
 11 Q Chief, I want to start first, you were
 12 asking a few follow-up questions about -- or
 13 questions about Morgan Hurley, and Ms. Benson's
 14 accusation that she was at the fire station,
 15 intoxicated; do you recall that?
 16 A Yes.
 17 Q Okay. Is that the kind -- And
 18 Ms. Benson did make that allegation against
 19 Hurley to you; right?
 20 A Yes.
 21 Q Is that the kind of allegation that
 22 can be especially harmful for a probationary or
 23 new firefighter?
 24 A Very much so, yes.
 25 Q Can it be career-ending?

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1 abandoned in such danger that could have killed
 2 or harmed her or her crew, that's a Mayday
 3 situation; right?
 4 A Yes.
 5 Q So, if she didn't do that in such
 6 perilous danger, does that suggest to you that
 7 it was not as dangerous as she's claiming now?
 8 A Correct.
 9 Q And the fact that it was not as
 10 dangerous as she's claiming now, that matches
 11 your recollection of the fire, too; right?
 12 A That's correct.
 13 Q It was not a life-and-death fire, was
 14 it?
 15 A No, that was -- no.
 16 Q Just to clarify, when she came out the
 17 second time, and I think you said she talked to
 18 you at your window?
 19 A Yes.
 20 Q And that's when you're incident
 21 command and sitting in the truck?
 22 A Correct.
 23 Q And, tell me, again, what you recall
 24 she said.
 25 A That was when she described to me that

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1 there was, like, the, in-passing, the quick
 2 conversation, and then Mahler -- she said -- she
 3 said, he wouldn't talk to me. But, you know, in
 4 reading her body language, and what she was
 5 telling me, is kind of a little bit of a smirk,
 6 or a smile, like, shaking-her-head-type deal,
 7 like, he wouldn't talk to me.
 8 Q Not like she was scared?
 9 A No, no.
 10 Q Did she seem almost happy to you that
 11 he didn't talk to her?
 12 A I don't -- wouldn't use the word
 13 "happy" or not, but it was, like, you put your
 14 shoulders up in the air and shake your head and
 15 go (indicating), you know, wouldn't talk to me.
 16 Q Didn't seem alarmed by it?
 17 A No, there was no -- no.
 18 Q Were you ever asked to talk to Shawn
 19 Mahler about the complaint that Amanda made on
 20 May 5th?
 21 A No.
 22 Q That's not your role --
 23 A No.
 24 Q -- at that time, was it?
 25 A No.

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1 Q Several crews were in there?
 2 A Yes.
 3 Q Can you approximate how many people
 4 that would be?
 5 A I would say, at that time, there was
 6 probably, you know, 12 to maybe -- just say,
 7 roughly, 12 people.
 8 Q You're not friends with Mahler, are
 9 you?
 10 A Not -- we don't, like, hang out on our
 11 day off. I'm not real good friends with him, no.
 12 Q Fair characterization that you were
 13 better friends with Benson than Captain Mahler
 14 in 2021?
 15 A That's correct.
 16 Q Felt like you had a good relationship
 17 with her?
 18 A Yes.
 19 Q Just saw you gave her good reviews?
 20 A I -- my daughter was dog-sitting for
 21 her. We were texting on our day off. My
 22 daughter does not dog-sit for Shawn. It's -- we
 23 had -- we had a pretty good working relationship
 24 is the way I would describe it.
 25 Q Does that make it even harder to come

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1 Q And you can't undertake investigations
 2 unless you're assigned that by the chief?
 3 A Correct.
 4 Q When -- Jumping around a little bit,
 5 but back when Ms. Benson and -- when T1 and T8
 6 are in the fire, the second time that T1 had
 7 gone in, the rest of T8 was in there, too;
 8 right? Borchers and Dyer, at least?
 9 A Borchers and Dyer. Love, I don't
 10 think Love ever made entry --
 11 Q Okay.
 12 A -- other than the utility room, or
 13 mechanical room.
 14 Q Okay. And at that time she's alleged
 15 she was abandoned, were there other people in
 16 that fire?
 17 A Yes, everybody -- it was a room, just
 18 say it was, roughly, this size, so there was
 19 16 people working in that area around the trash
 20 compactor fire.
 21 Q In the area where she was?
 22 A Yes.
 23 Q And they were all still in there when
 24 she left before them?
 25 A Correct. Several crews.

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1 here today?
 2 A Yes, it does. Yes.
 3 Q And are you being truthful, though,
 4 for the Arbitrator?
 5 A Yes.
 6 Q So we're not just talking about --
 7 Amanda Benson didn't just accuse Shawn Mahler of
 8 not talking to her, she accused him of not
 9 talking to her, abandoning her in a warehouse
 10 that was a dangerous warehouse fire that was
 11 threatening to her life; correct?
 12 A That is correct. And her crew. So
 13 two other people is the way I -- is the way I
 14 understand this, a total of three.
 15 Q Okay. And, so, when you take it that
 16 far, and abandoning in a dangerous, deadly
 17 condition, that's a serious accusation?
 18 A Very serious.
 19 Q How would you have felt if that
 20 accusation had been made against you?
 21 A If I would have been in Truck 8's
 22 position?
 23 Q Yeah.
 24 A I, I would have been very confused how
 25 you could even make that accusation, based on

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1 Q (By Ms. Gutttau) And I can point it
2 out to you, if you--
3 A (Witness reading.) Yes, I have found
4 it.
5 Q Okay. So T5 reports "T5 was then
6 assigned ventilation to approve conditions for
7 equipment operators to start moving the
8 cardboard pile outside. T5 then reentered the
9 building to find improved visibility with
10 lingering smoke. T5 worked to improve
11 conditions with controlling some doors and
12 utilizing negative pressure."
13 Did I read that correctly?
14 A Yes.
15 Q Okay. And so earlier when we had
16 talked about Truck 5, this -- their report
17 indicates that they were also assigned and did
18 perform the task of ventilation; correct?
19 A Yes, that's correct.
20 Q Okay. And so if they were the first
21 ones to be assigned ventilation, would it be
22 reasonable or possible to assume that they were
23 actually the vent group supervisor?
24 A No, ma'am.
25 Q Or the supervisor over ventilations

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1 A I'm sorry. One more time, ma'am.
2 Q You testified earlier that it might
3 have been reasonable for Captain Mahler to -- or
4 for Captain Benson to complain if Captain Mahler
5 ignored her?
6 A It would be reasonable, yes.
7 Q But you're not offering an opinion as
8 to whether or not it was reasonable for her to
9 publicly accuse him of abandoning her to die?
10 A No, ma'am.
11 Q Okay. Ope, sorry. I should have had
12 you keep that book.
13 A Sorry.
14 Q More weightlifting. I want to turn to
15 Exhibit 19.
16 A (Witness complies.)
17 Q And, actually, before I get to that,
18 would you agree -- Is it a serious accusation
19 for a firefighter to accuse a fellow firefighter
20 of putting their life in danger?
21 A Yes.
22 Q I want to turn, then, to Exhibit 19,
23 and I want to turn to page 2, No. 8.
24 A (Witness complies.)
25 Q And this -- And I'll -- You recognize

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1 tasks?
2 A It would be reasonable to assume that
3 they were the initial primary ventilation task,
4 yes.
5 Q Okay.
6 A But not a vent group supervisor
7 because that was not assigned to them.
8 Q How about a vent supervisor or
9 supervisor over that task?
10 A The supervisor over that task, yes,
11 ma'am.
12 Q So that would be reasonable to assume
13 that they were that because you had testified
14 earlier --
15 A Yes, ma'am.
16 Q -- the first one assigned is that.
17 A Yes, ma'am.
18 Q Okay. And just to make sure I'm
19 correct, it is -- it's important to report
20 safety concerns as soon -- as quickly as
21 possible?
22 A Yes, ma'am.
23 Q You, you said that it may be
24 reasonable for Ms. Benson to have complained
25 that Captain Mahler ignored her; correct?

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1 this as Ms. Benson's sworn affidavit in federal
2 court?
3 A Yes.
4 Q Okay. And you've seen this before?
5 A I recall seeing it, yes.
6 Q This is what I could not find earlier
7 when we were talking about this.
8 In No. 8, she states in the second
9 sentence, "Mahler was in charge of a separate
10 team and also served as the group supervisor."
11 That's not correct, is it?
12 A Ma'am, I apologize. That's not what
13 -- That's not what I have. I have --
14 Q Exhibit --
15 A -- page 2 --
16 Q Yep.
17 A Exhibit --
18 Q Number 8 right there (indicating).
19 A "My" --
20 Q Right there (indicating). Second
21 sentence.
22 A Okay. I'm sorry.
23 Q Yep. The second sentence says,
24 "Mahler" --
25 A Mahler was in charge of a separate

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1 team, Team 8, and also served as the group
 2 supervisor overseeing Truck 1. Yes.
 3 Q So that is not a correct statement
 4 that he was the group supervisor, is it?
 5 A That is not a correct statement.
 6 Q Okay.
 7 MS. GUTTAU: Nothing further.
 8 THE ARBITRATOR: How about lunch?
 9 You guys hungry? Or you want to just --
 10 MS. GUTTAU: Yeah.
 11 THE ARBITRATOR: -- soldier on?
 12 MS. GUTTAU: It's up to you, sir.
 13 Yeah, I'm fine with soldiering on or if you want
 14 to take ten minutes and then come back? We've
 15 been going at it for about three hours.
 16 THE ARBITRATOR: No, I got to get
 17 something to eat here, folks.
 18 MR. CORRIGAN: Okay.
 19 THE ARBITRATOR: I don't know.
 20 How many more witnesses did you want to try to
 21 get through today?
 22 MS. GUTTAU: So we have our
 23 expert. He can come -- He's going to be video
 24 Zoom with us.
 25 THE ARBITRATOR: He's video

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1 already?
 2 MS. GUTTAU: Yeah. No, he's not
 3 here yet. We'll have him join whenever we come
 4 back for lunch.
 5 THE ARBITRATOR: Okay.
 6 MS. GUTTAU: He's not on yet.
 7 THE ARBITRATOR: Okay.
 8 MS. GUTTAU: And then if we get
 9 through him, we'll resume back to fact
 10 witnesses, if we can.
 11 THE ARBITRATOR: Okay. We're
 12 gonna be done at four.
 13 MS. GUTTAU: That helps us plan,
 14 so we'll get that figured out over lunch.
 15 THE ARBITRATOR: Sounds good.
 16 All right. So it's 1:30. Be back here at two
 17 o'clock.
 18 MS. GUTTAU: All right.
 19 MR. CORRIGAN: All right.
 20 MS. GUTTAU: Thank you.
 21 (A 30-minute lunch recess was
 22 taken, after which time the
 23 following proceedings were had:)
 24
 25

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1 DEPUTY CHIEF GEORGE HEALY,
 2 Having been sworn to tell the truth,
 3 the whole truth and nothing but the
 4 truth, testified as follows:
 5 THE ARBITRATOR: Please state and
 6 spell your name for the record.
 7 THE WITNESS: George Healy,
 8 G-E-O-R-G-E, H-E-A-L-Y.
 9 THE ARBITRATOR: Thank you. You
 10 can proceed, Counsel.
 11 MS. GUTTAU: Thank you.
 12 DIRECT EXAMINATION
 13 BY MS. GUTTAU:
 14 Q Chief Healy, can you tell us what your
 15 current job title is?
 16 A I'm a deputy chief of the FDNY
 17 (unintelligible).
 18 Q The New York fire department?
 19 A Yes, ma'am.
 20 Q Okay. And before we talk about your
 21 employment, can you tell the Arbitrator a little
 22 bit about your education.
 23 A Well, I'm a graduate of St. John's
 24 University. I graduated in 1990 with a BS in
 25 business administration, and in 1991 I came on
 the New York City Fire Department.

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1 Q And tell us a little bit about the
 2 roles you've held at the New York City Fire
 3 Department.
 4 A I was the supervisor for close to ten
 5 years. I got promoted in 2000 to lieutenant,
 6 and I served as lieutenant, or company officer,
 7 for about ten and a half years in an assignment
 8 to the truck company of Brooklyn, and then I got
 9 promoted captain, and I roughly spent about two
 10 and a half years as a captain. Part of that
 11 time I was a company officer in Northern Queens,
 12 and after about six months, I went to our
 13 special operations command where I worked a lot
 14 of rescue companies and squad companies. They
 15 go to fires very regularly, and they also do
 16 tech rescue including scuba, rope work, trench
 17 collapse, high angle rope work, structural
 18 collapse.
 19 And upon promotion, I was a battalion
 20 chief in South Queens from, I think, 2005 to
 21 2013. At that time I got promoted to deputy
 22 chief, and I've been a deputy chief -- I was
 23 assigned to Brooklyn for a short time, but I
 24 returned to South Queens I think in 2014, maybe
 25 2015, and I've been in South Queens since that

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1 Q I mean, that's when you became a
2 company officer?
3 A 2000.
4 Q Okay. Did you talk to any other
5 firefighters when you came to Omaha -- I'm
6 sorry, to Lincoln to -- other than Mr. Mahler?
7 A I recall talking in person with Faust,
8 and I believe I spoke with Smith, and it might
9 not have been in person, but I'm not a hundred
10 percent certain, and, certainly, I was
11 introduced to the chief of the department, also.
12 Q So in addition to Mahler, you may have
13 spoken with Faust, Smith, and Engler?
14 A I believe that would be -- I mean, I
15 spoke to other people, but I don't think -- You
16 know, I met other people. I don't think anyone
17 else specifically related to these events --
18 Q Okay. So what --
19 A -- on the uniform side.
20 Q I think you identified the
21 Declarations of Mr. Roberts, Firefighter Hurley,
22 Borchers, Dyer, Love. Those were people that
23 you actually spoke to?
24 A No, sir. I just read the documents
25 provided, the exhibits provided.

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1 everything I reviewed, that he or anybody else
2 was her group supervisor.
3 Q And regardless of who said what, he
4 said, she said, if he ignored her, did his
5 ignoring her, if that happened, based on what
6 you reviewed and based on your experience, did
7 that endanger her life?
8 A I do not believe so.
9 Q If it did, was she required to call a
10 Mayday?
11 A If your life or your crew's life is in
12 danger, you're required to give a Mayday.
13 MS. GUTTAU: Nothing further.
14 THE ARBITRATOR: Okay. Anything,
15 John?
16 MR. CORRIGAN: Yeah.
17 THE ARBITRATOR: Go ahead.
18 RE-CROSS-EXAMINATION
19 BY MR. CORRIGAN:
20 Q It is true, sir, though, that failure
21 to communicate on the fireground could cause a
22 diminution of firefighter safety?
23 A Failure to communicate on the
24 fireground absolutely can, in fact, threaten
25 firefighter safety.

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1 Q Those Declarations?
2 A Correct.
3 Q Okay.
4 MR. CORRIGAN: If I can take a
5 minute.
6 (A short recess was taken.)
7 MR. CORRIGAN: I don't have any
8 other questions. Thank you, Mr. Healy.
9 THE ARBITRATOR: All right. Go
10 ahead, Heidi.
11 MS. GUTTAU: At break he limited
12 me to four questions, so that means you get a
13 fourth of a question.
14 REDIRECT EXAMINATION
15 BY MS. GUTTAU:
16 Q In Ms. Benson's affidavit to the
17 federal court requesting that Captain Mahler be
18 removed from duty due to endangering her, she
19 alleges in her affidavit under oath that he was
20 her group supervisor.
21 That's not true, is it?
22 A Nothing that I have reviewed leads me
23 to make that assumption.
24 Q Okay.
25 A There is nothing indicating that in

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1 MR. CORRIGAN: I don't have any
2 other questions.
3 THE ARBITRATOR: All right,
4 folks. We're gonna adjourn. We'll see you --
5 Can we start at ten tomorrow? Is that okay with
6 you guys?
7 MS. GUTTAU:
8 MR. CORRIGAN: Can we go till
9 five?
10 THE ARBITRATOR: Again?
11 MR. CORRIGAN: Can we skip lunch
12 or maybe take a shortened lunch?
13 THE ARBITRATOR: You know what?
14 I'm about 30 pounds overweight. We can probably
15 do that.
16 MR. CORRIGAN: All right.
17 (At 4:03 p.m., the proceedings
18 were continued to August 2, 2022.)
19
20
21
22
23
24
25

1 FEDERAL MEDIATION AND CONCILIATION SERVICE
2 BEFORE ARBITRATOR STEVEN RUTZICK

3 LINCOLN FIREFIGHTERS) FMCS CASE NO.
4 ASSOCIATION, IAFF LOCAL) 22103-00847
5 644, and AMANDA BENSON,)

6)
7 Grievants,)

8)
9 vs.) VOLUME V
10) PAGES 1057-1302
11 CITY OF LINCOLN,)

12)
13 Respondent.)

14)
15)

16 ARBITRATION HEARING held before
17 Arbitrator Steven Rutzick (via Zoom), with
18 Vickie L. Quinn, CCR and Notary Public for the
19 State of Nebraska, counsel and all parties
20 present at the City-County Building, 555 South
21 10th Street, Suite 300, Lincoln, Nebraska,
22 beginning at 10:04 a.m., on the 2nd day of
23 August, 2022.
24
25

*** **

A P P E A R A N C E S

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17 MS. ABIGAIL LITRELL
18 ASSISTANT CITY ATTORNEY
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22 ALSO PRESENT: Mr. Ryan Moser, Vice President
23 IAFF Local 644; Mr. Dave Engler, Fire Chief;
24 Tiffany Leasure, Paralegal for City of Omaha
25

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13 DIVISION CHIEF MICHAEL SMITH
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2 FOR THE CITY:

3 AISHAH WITTE

4 Direct by Ms. Littrell..... 1214
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21 CHIEF EDWARD HADFIELD

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16 CAPTAIN BRIAN GILES

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18 Cross by Ms. Littrell..... 1823
19 Redirect by Mr. Corrigan..... 1859
20 Recross by Ms. Littrell..... 1864

21 ** * * *

1 CITY EXHIBITS

2 EXHIBIT DESCRIPTION

3 1 8/16/21 Memorandum and Order Denying
4 Plaintiff's Motion for Injunction by
5 Senior District Judge Richard G.
6 Kopf, United States District Court
7 for the District of Nebraska,
8 8/15/21
9 2 Declaration of Fire Chief David
10 Engler
11 3 Declaration of BC Michael Smith
12 4 Declaration of Captain Mahler
13 5 Declaration of FAO Matt Roberts
14 6 Declaration of FF Morgan Hurley
15 7 Declaration of FF Jason Love
16 8 Declaration of FF Stephen Dyer
17 9 Declaration of FF Trent Borchers
18 10 Statement of Curt Faust
19 11 8/19/21 Investigation Report into
20 4/26/21 Fire Incident by Attorney
21 Torrey Gerdes, Baylor Evnen Law Firm
22 12 Audio of Fire Department Radio
23 Recording of 4/26/21 Warehouse Fire
24 13 Transcript of Fire Department Radio
25 Recording of 4/26/21 Warehouse Fire
26 14 Declaration of Aishah Witte,
27 Authenticating Audio Transcript
28 15 Benson's 5/5/21 Complaint Regarding
29 the 4/26/21 Warehouse Fire
30 16 Warehouse Photographs

1 CITY EXHIBITS, CONT'D

2 EXHIBIT DESCRIPTION

3 17 LFR Prime Report of Warehouse Fire
4 18 Benson's 6/9/21 Grievance
5 19 Benson's 6/11/21 Affidavit
6 20 Benson's 8/9/21 Affidavit
7 21 Media Articles
8 22 Benson's Interview Audio 7/14/21
9 23 8 of '21 Grievance Hearing RE:
10 June 9, 21 Grievance
11 24 9/24/21 Denial of 6/9/21 Grievance
12 Letter to Benson
13 25 9/27/21 Pre-Disciplinary Meeting
14 Notice Letter to Benson
15 Audio of 10/12/21 Pre-Disciplinary
16 Meeting
17 27 Transcript of 10/12/21 Meeting
18 28 10/19/21 Termination Letter
19 29 CBA, 8/20/20 to 8/31/21
20 30 CBA, 8/19/21 to 8/30/23
21 31 LFR Professional Code of
22 Ethics/Standard of Conduct Policy
23 LFR FF Safety Policy
24 LFR 2020 Annual Report
25 Captain Mahler's Awards
26 2017 Letter to Mahler
27 Terminal Building Fire Near-Miss
28 Report, 2/19/18

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7	Disciplinary Action
8	40 Lincoln Municipal Code - Dismissal
9	and Grievance Procedure
10	41 Grievant's 11/3/21 Appeal E-mail
11	42 Documents Regarding LFR Discipline
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13	Investigator Gerdes
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15	45 Witte Investigative File
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18	47 Benson's Brief ISO Preliminary
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20	48 Benson 2014 Complaint Retraction
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22	50 Management Policy
23	51 Victim Removal Presentation
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7	123 Interview Audio Recording
8	124 Letter to Ms. Gerdes
9	125 Declaration of David Engler
10	126 Declaration of Michael Smith
11	127 Declaration of Matthew Roberts
12	128 Declaration of Morgan Hurley
13	129 Declaration of Trent Borchers
14	130 Declaration of Stephen Dyers
15	131 Declaration of Jason Love
16	132 Declaration of Shawn Mahler
17	133 Grievance Letter
18	134 Declaration of Edward Hadfield
19	135 Enhanced Fireground Safety,
20	Effective Use of Division & Group
21	Supervisors
22	136 Transcript of Grievance Hearing,
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16	111 E-mail from Benson to Faust & Witte,
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	*** **

<p style="text-align: right;">Page 1069</p> <p>1 * All exhibits offered with objections to 2 Union's 101, 102, 103, 147, 149, 150; and City 3 Exhibits 20, 21, 38, 46, and 47</p> <p>4 * Union Exhibit 149 was offered and received on 5 page 142 6 * Union Exhibit 150 was offered on page 143 and 7 received on page 144</p> <p>8 * Union Exhibit 156, Telephone Log Activity, was 9 marked on page 750 10 * City Exhibit 156, E-mail to Aishah from 11 Mahler, was marked on page 1738</p> <p>12 * City Exhibit 50 was marked on June 22nd, 2022, 13 offered and received on page 571</p> <p>14 *** ** *</p> <p>15 16 17 18 19 20 21 22 23 24 25</p>	<p style="text-align: right;">Page 1070</p> <p>1 (On August 2, 2022, at 10:04 2 a.m., the proceedings continued as follows:) 3 THE ARBITRATOR: All right. 4 Let's go back on the record. 5 MS. GUTTAU: I think we're 6 starting where we left off with the chief's 7 cross five weeks ago. 8 THE ARBITRATOR: Is that right? 9 Okay. 10 CHIEF DAVID THOMAS ENGLER, 11 Having been sworn to tell the truth, 12 the whole truth and nothing but the 13 truth, testified as follows: 14 CROSS-EXAMINATION, CONT'D 15 BY MR. CORRIGAN: 16 Q Good morning, Chief Engler, and 17 welcome back to the hearing. 18 A Good morning. 19 Q I wanted to talk a little bit about 20 the practices in the fire department for 21 incident command first, if you don't mind. 22 So I'm going to ask you to take a look at 23 Exhibit 146. 24 A (Witness complies.) 25 Q And do you recognize that document? A Yes.</p>
<p style="text-align: right;">Page 1071</p> <p>1 Q And is that a working document in the 2 fire department now, or is this something that 3 you've overrun with another newer policy? 4 A It still exists. 5 Q And it lists out in that document the 6 NIOSH top five causal factors for firefighter 7 deaths; right? 8 A Yes. 9 Q Including lack of incident command, 10 lack of accountability, inadequate 11 communications and failure to -- or lack of SOGs 12 or failure to follow established SOGs; right? 13 A Yes. 14 Q And just looking at page 3, you have a 15 definition section -- or Terminology Review, and 16 what's the definition under the Terminology 17 Review for a group? 18 A A group is "A functional assignment on 19 the incident scene; also an organizational level 20 in the incident organization chart." 21 Q And what's a single resource? 22 A "A crew, team or company on the 23 incident scene that may operate under a 24 division/group supervisor, or may be assigned as 25 a standalone crew and is managed by a unit</p>	<p style="text-align: right;">Page 1072</p> <p>1 leader." 2 Q And what is the definition of 3 "tactics"? 4 A "The deployment of resources to 5 accomplish incident objectives involving the 6 delegation of tasks." 7 Q So if we're going to engage in 8 ventilation, is that an incident objective or a 9 task? 10 A I guess I would say ventilation itself 11 is an objective. 12 Q And if you go forward to page 8 -- 13 A (Witness complies.) 14 Q -- that gives us a table of an 15 incident organizational chart for a working 16 incident in a small structure using division and 17 groups; right? 18 A Yes. 19 Q So under that working incident, the -- 20 Battalion 1 would be the incident commander, and 21 there are different -- an interior division, a 22 roof division, and then a single resource for 23 rescue or R-I-T, RIT; right? 24 A Yes. 25 Q And a medic unit as a single resource</p>

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1 Q Okay. And it also did conflict with
2 Judge Kopf's findings and orders, as well?
3 A Correct.
4 Q Okay. So it wasn't just two
5 conflicting statements. As far as being
6 abandoned to die in a dangerous warehouse fire,
7 taking it that far is contradicted by every
8 other piece of evidence that you had; correct?
9 A That is correct.
10 Q Okay. And she did make it public
11 because she filed it publicly in the federal
12 court; correct?
13 A It was made public, and I'm assuming
14 that was one of the ways that it got public.
15 Q And this lawsuit has been widely
16 reported over time; correct?
17 A That's correct.
18 Q Is it an accusation that another
19 firefighter abandoned you in a way that could
20 have killed or injured you, is that probably one
21 of the most egregious types of accusations you
22 can make against another firefighter?
23 A Yes. I don't recall seeing that
24 before.
25 Q Ever in your experience?

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1 would you have fired Ms. Benson if these
2 allegations or the incident report to you had
3 not been picked up by the newspapers?
4 THE WITNESS: I don't -- I don't
5 necessarily believe so. I believe the, the
6 point -- the point of concern was initially,
7 when the assignment -- the ventilation
8 assignment was made -- And there is a dispute
9 whether the -- whether there was a group
10 supervisor and whether Truck 1 was working for
11 that group supervisor, and I think that if that
12 -- if, if the call had played out and that was
13 brought up, it would have been handled
14 completely differently than, than what it was
15 made to be.
16 THE ARBITRATOR: All right.
17 You're not answering my question.
18 THE WITNESS: Oh, I'm sorry. I
19 must have misunderstood.
20 THE ARBITRATOR: Would you have
21 fired her if the papers had not picked up this
22 story?
23 THE WITNESS: I would say that
24 that played a major role. The other major role
25 was the City spent a significant amount of money

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1 A I'm not going to say it hasn't
2 happened, but I've never -- I don't ever recall
3 seeing it.
4 Q And taking it that far, making that
5 allegation, that can -- that can ruin a
6 firefighter's career; correct?
7 A Yes.
8 Q Okay. Meaning Captain Mahler?
9 A Yeah.
10 Q Yeah?
11 A Absolutely.
12 Q Yeah. And it also damaged the
13 reputation of LFR?
14 A I believe so.
15 Q Again, if she had just come to you and
16 said, He didn't talk to me, that would be a
17 different thing than what we're here for today;
18 correct?
19 A That is correct.
20 Q In your experience --
21 THE ARBITRATOR: I have a
22 question for the chief.
23 MS. GUTTAU: Yes.
24 THE ARBITRATOR: Would we be
25 sitting here today, would you have -- and/or

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1 doing an investigation that, that really
2 resulted in the -- in the same finding by our
3 internal investigation. So those two things,
4 but I would say likely not.
5 THE ARBITRATOR: So if I'm
6 hearing you, the fact that the newspapers picked
7 it up and it became a story, quote, unquote, and
8 the other part was that because the City had to
9 spend money?
10 THE WITNESS: Well, no, the, the
11 fact that our internal investigation wasn't
12 found to be sufficient, although the, the same
13 conclusion was arrived at, but that the -- that
14 I put Captain Mahler on a leave with pay for,
15 for three months, and then the investigation was
16 incredibly expensive, to determine whether they
17 were -- they could have been killed or injured
18 in a dangerous burning warehouse, and then to
19 find out that, hey, that, that wasn't the case,
20 a significant amount of money was spent on, on
21 what I determined to be, out of the chute, a
22 serious allegation, and then found out that that
23 actually wasn't factual.
24 THE ARBITRATOR: Okay. Go ahead.
25 Q (By Ms. Gutttau) I want to talk a

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1 officer about drinking; that person was also
2 dismissed?

3 A Yes.

4 Q Okay. And then there -- Have there
5 been times when people have been dishonest and
6 they took resignation in lieu of being
7 terminated?

8 A Yes.

9 Q So it's not unusual to terminate
10 somebody for dishonesty at LFR, is it?

11 A No.

12 Q And didn't -- Has -- When you took
13 over as chief, was there -- did you have any
14 discussions with the Union as far as discipline
15 issues or accountability going forward? Was
16 that a discussion you had?

17 A It was a -- I had the discussion with
18 many. I did have the discussion with, with
19 Local 644 representatives, but also throughout
20 the department, that everyone recognized that
21 there were some cultural issues within the
22 department, and that there were some
23 accountability issues.

24 And I think when we looked back at
25 some of the, the allegations that we talked

Page 1150

1 about and the discipline that matches, it
2 probably was a little bit of a mismatch, and
3 those things do lead to a lack of
4 accountability.

5 And so one of the things, hearing this
6 accountability and cultural piece, I, I did make
7 it very clear that, that it was my intent to
8 change the culture and make it a better
9 environment for everybody. I do recall
10 Ms. Benson handing me a paper that actually
11 recognized that the culture -- there were
12 cultural problems and that we needed
13 accountability. And so it wasn't just one
14 person. It wasn't just two people. It wasn't
15 just the Union. It was a -- It was a number of
16 people.

17 And I'm committed to trying to change
18 the culture of the organization, which is tough.
19 I mean, it's a big organization, but, you know,
20 we had a pre-disciplinary hearing the other day
21 where a member recognized that, that we are
22 making efforts to change the culture. So I
23 believe it's happening, but it takes work, and
24 it does take a change in the discipline
25 philosophy to make that happen, and that's,

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1 that's what I'm trying to do as fire chief.

2 Q And then backing up to, actually,
3 Mr. Rutzick's questions. So you said the big
4 issues were that you -- because of her false
5 allegation, you placed Captain Mahler on leave
6 for three months; correct?

7 A I did, yes.

8 Q And that's a cost to the -- a great
9 cost to the City?

10 A I can't remember the amount, but it,
11 it was more significant than I thought.

12 Q Uh-huh.

13 A Yeah.

14 Q And that leaves the City without his
15 experience, services during that time; correct?

16 A Sure. Yeah.

17 Q He's been publicly recognized for
18 saving lives, hasn't he?

19 A Yes, he has. Yeah.

20 Q And you said the cost of the Gerdes
21 investigation. Because she -- Because Benson's
22 perpetuated her claim that she had been
23 abandoned to die, the City engaged an
24 investigator; correct?

25 A They did, yes.

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1 Q And that's what you're referring to as
2 the Gerdes investigation?

3 A Yes.

4 Q And that cost tens of thousands of
5 dollars, to your knowledge?

6 A I've heard upwards of 80.

7 Q Yep. Okay. And then also that she
8 made it public herself?

9 A Yes.

10 Q And then it was picked up by the
11 papers; correct?

12 A It was.

13 Q Okay. Is it -- At the beginning of
14 the testimony today, Mr. Corrigan asked you
15 about a best-practices exhibit. Is a
16 best-practice document the same as a policy?

17 A No, it's not.

18 Q Okay. And is a policy what is
19 binding? Or how would you describe the
20 difference, I guess?

21 A A policy would be binding. Best
22 practice? It was put together, I believe, in
23 2014 by a couple of individuals and, and in all
24 fairness, it was to bridge a clear gap that we
25 had and probably continue to have. I don't know

<p style="text-align: right;">Page 1153</p> <p>1 if all of the information in there is, today, 2 best practice. We've -- We did put in for a 3 grant for some incident command training to get 4 the newest and greatest, but as with everything, 5 there, there are changes in practices and that 6 sort of thing. 7 For instance, in -- nowhere in 8 incident command can I find anything that says 9 "assist with," and then "our best practices" is 10 written in there. So there are some things in 11 there that are probably not best practice. 12 Q And, again, Ms. Benson wasn't 13 terminated for an interpretation of "assist 14 with" or not; it was taking it to the point of 15 accusing somebody of abandoning them and to die 16 [sic]; right? 17 A That's correct. 18 MR. CORRIGAN: I'm going to 19 object to the form of that question. I think 20 that is a misstatement of Ms. Benson's actual 21 statements that led to her termination, 22 according to Mr. -- according to the chief, 23 because she never said that he abandoned us and 24 left us to die. 25 MS. GUTTAU: I'll restate with</p>	<p style="text-align: right;">Page 1154</p> <p>1 his exact -- with her exact language. Okay. 2 MR. CORRIGAN: Within the 3 documents that were -- 4 MS. GUTTAU: Yes. 5 MR. CORRIGAN: -- that were 6 relied upon -- 7 MS. GUTTAU: I'll quote her. 8 MR. CORRIGAN: -- by the chief. 9 MS. GUTTAU: Yeah, they are 10 quoted in his -- in his statement. 11 MR. CORRIGAN: Okay. 12 Q (By Ms. Gutttau) She said, "You also 13 stated his behavior could have injured or killed 14 you, Roberts, and Hurley." 15 That's taking it further than just 16 saying, Oh, I wasn't sure what to -- what 17 "assist with" meant, isn't it? 18 A Yes. 19 Q Okay. And that's accusing somebody of 20 abandoning them, because she also stated, 21 "abandoned in a dangerous burning warehouse by 22 Captain Shawn Mahler"; correct? 23 A That's correct. 24 Q Okay. And that's the big -- Is that 25 the issue here for you? Can you explain to the</p>
<p style="text-align: right;">Page 1155</p> <p>1 Arbitrator why that's a problem? 2 A Well, again, there is -- there is -- 3 It was said a "dangerous burning warehouse." At 4 the time of the incident, the, the fire was 5 reported under control. The warehouse wasn't 6 burning. There were -- There were some contents 7 in the warehouse and in the compactor that were 8 burning. In fact, I think it was spot fires at 9 that point in time. 10 The behavior could have injured or 11 killed you, FAO Roberts, and Recruit Hurley. 12 Everyone testified, including Ms. Benson, I 13 think, in the -- in the Gerdes [sic], that they 14 didn't feel their lives were in jeopardy. So 15 that -- That's just inconsistent with what was 16 originally reported. 17 Q And, and it's a serious accusation? 18 A That's a ser -- When you say "You 19 could have killed me," that's a serious 20 accusation. 21 Q Okay. I want to back up to Union 22 Exhibit -- So back to the black binder. Sorry. 23 A (Witness complies.) Okay. 24 Q Okay. So -- And, actually, let's just 25 back up real quick to what I was asking about.</p>	<p style="text-align: right;">Page 1156</p> <p>1 So in court, if you want to -- Sorry. Now I'm 2 going to have you grab the red one. 3 A The red one? All right. (Witness 4 complies.) Okay. 5 Q So let's turn -- We were talking about 6 the language that -- where Ms. Benson made the 7 accusation, so I want to make sure we understand 8 where that was coming from. 9 A Okay. 10 Q So if you want to turn to Exhibit 19 11 and paragraph 17. 12 A (Witness complies.) 13 Q She states, "Mahler abandoned me, 14 Roberts, and Hurley in an IDLH environment 15 (immediately dangerous to life or health) with 16 no direction." 17 So that was part of her allegation; 18 correct? 19 A Yes. 20 Q This is her affidavit in federal 21 court? 22 A Correct. 23 Q And then turn back a couple of pages 24 to paragraph 33. 25 A (Witness complies.)</p>

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1 to make sure her crew has appropriate air
2 levels?

3 A We don't have any sort of policy.
4 There are -- I mean, there are, I guess you
5 could say, best practices even, but we don't
6 have anything written down. But the general
7 understanding is, is if you're going to go -- if
8 you're gonna exit and you're, you know, you're
9 at half or so, I mean, it's a good idea,
10 especially when you're going into a bigger
11 building. But we don't have anything specific.

12 I think, as, as a captain, as in any
13 position, I would want to make sure I had plenty
14 of air, just in case, because you never know
15 what's gonna happen.

16 Q Okay. And she did not do that in this
17 fire because Roberts' low air alarm went off
18 shortly after they had gone back into the
19 warehouse, didn't it?

20 A That's my recollection, yes.

21 Q Okay. Would you expect a firefighter
22 to experience a safety incident or had safety
23 concerns at a fire to report that to a safety
24 officer immediately?

25 A There is -- There is a number of

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1 things that could be done. I think probably
2 reporting it to the safety officer would be a
3 good idea to prevent any further potential
4 incidents. You could report it to the incident
5 commander.

6 And then following the incident, we
7 have a policy on what we call near-miss, so we
8 do near-miss reports, and the idea behind that
9 is to identify those things that ended up they
10 were -- they were wrong but didn't end up in a
11 catastrophe, and then correcting them down the
12 road.

13 Q And did any of that -- Did Ms. Benson
14 initiate any of that in regard to this, this
15 fire on the 26th?

16 A No. The, the first time I believe I
17 was made aware of it was in her report on the
18 5th.

19 Q Okay. If a firefighter is disoriented
20 or trapped or lost, is it -- is that -- do you
21 call a Mayday?

22 A You're supposed to, yes.

23 Q Okay. If you think your life is in
24 mortal danger, that you think there is maybe a
25 chance you can get yourself out, is it still a

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1 best practice to call a Mayday?

2 A It's highly encouraged to call a
3 Mayday because, while you may think you're okay
4 or you may think you can get your way out, time
5 goes by quickly, and the earlier that people
6 respond, the better.

7 Q Okay. In her May 5th complaint, which
8 was Exhibit 15, which might be in the red one --

9 A The red one?

10 Q So as we talked about earlier, we read
11 where she said, "At this point" -- the fifth
12 paragraph down -- "I realized that Mahler had
13 abandoned us in an unsafe environment." And
14 later on in her letter she claims that they
15 could have been killed because of his
16 abandonment.

17 MR. CORRIGAN: Objection to the
18 characterization.

19 Q (By Ms. Guttai) Well, later on she
20 says, "His refusal to communicate could have
21 injured or killed me, Roberts, and Hurley," her
22 crew; correct?

23 A Yes.

24 Q Okay. So if she says in the fifth
25 paragraph, "At this point I realized he had

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1 abandoned us in an unsafe environment," is that
2 the point that a Mayday should be called, if you
3 fear for your life?

4 A That would be a good time to do it,
5 yes.

6 Q Okay. Was it suspicious to you that
7 someone would later claim that they could have
8 been killed or injured in a fire in which they
9 never reported any unsafe conditions or called a
10 Mayday?

11 A I would expect that it would be done
12 fairly quickly after the incident occurred.

13 Q And it should be included in the Prime
14 report, the incident report, if there was a
15 safety incident?

16 A Yes, or a near-miss, yes.

17 Q And that wasn't included by Benson,
18 was it, in her report?

19 A No.

20 Q In the first part of the arb -- Ope.
21 Okay.

22 In the first part of the arbitration, you
23 were asked quite a few questions about Battalion
24 Chief Faust and Mrs. Ben -- or Ms. Benson's
25 report.

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1 longer unfairly scrutinized regarding my pending
2 lawsuit against me [sic].

3 And it goes on to explain what
4 Ms. Lundvall conveyed to her; correct?

5 A Yes.

6 Q And so in her own words, she's saying
7 she got that phone call from Jessie Lundvall at
8 11:48, and at some time within the next -- She
9 sends this to Aishah 36 minutes later
10 approximately; correct?

11 A Yes, that's correct.

12 Q And had talked to Aishah sometime
13 within that 36 minutes, according to her e-mail;
14 correct?

15 A That's what it looks like.

16 Q So she immediately reports a rumor
17 that she hears within 30-something minutes;
18 correct?

19 A Yes.

20 Q Did it seem troublesome to you that
21 she waited days to report what she states was a
22 condition that Captain Mahler placed her in that
23 could have killed or injured her and her crew?

24 A Seems like a long time.

25 Q And did that raise concerns for you in

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1 the credibility of her complaint of being
2 abandoned?

3 A Yeah. I would say initially I just
4 looked at the complaint itself and I didn't even
5 take that into consideration, but looking back
6 on it, that's, that's a long time for such a
7 substantial complaint.

8 Q And you knew that she had made other
9 complaints pretty quickly when she had issues
10 with other firefighter, such as Woitalewicz and
11 Roof?

12 A Yes.

13 Q And those were just personnel kind of
14 issues, nothing that was life threatening?

15 A That's correct.

16 Q Okay. As far as -- To your knowledge,
17 has Ms. Benson received -- only been a
18 firefighter at -- Let me rephrase that.

19 Until the time of her termination, to
20 your knowledge, had Ms. Benson started her
21 career at LFR and only been a firefighter at
22 LFR?

23 A As far as I know.

24 Q So she received her training as a
25 firefighter at LFR; correct?

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1 A I believe so.

2 Q And should be familiar with LFR
3 practices and procedures; correct?

4 A Yes.

5 Q Okay. All the other firefighters who
6 were present on her crew or Mahler's crew at the
7 warehouse scene, within those ten minutes that
8 they were inside together, or even before, they
9 all testified that they, they had no belief that
10 Captain Mahler was their supervisor?

11 A They did testify to that. The other
12 -- The other thing I -- that weighed heavily on
13 my opinion was, was I asked the incident
14 commander what his intent was, and he said it
15 was not his intent to have Mahler as a group
16 supervisor. So, you know, I think that's
17 probably bigger than what the other people
18 believed, too.

19 Q Okay. But in their training at LFR,
20 they reached the conclusion that they had no --
21 they didn't think he was their supervisor?

22 A That's correct. And when we -- When
23 we do those group assignments, it's, it's very
24 clear on the radio what the -- what we do.
25 We've got a system, and it may be different from

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1 other departments, I don't know, or it may be
2 the same, but it's, it's very clear.

3 Q Okay. And just because somebody has a
4 mistaken impression, that doesn't mean that
5 other person becomes their supervisor, does it?

6 A No.

7 Q Okay. And would it be reasonable for
8 Captain Mahler to have a -- have less knowledge
9 about the interior of the warehouse than
10 Ms. Benson since he hadn't been in there yet?

11 A Yes. He had not been in there yet,
12 and, therefore, he, he wouldn't have any
13 knowledge as to the conditions inside.

14 Q Okay. Is it reasonable for
15 firefighters to walk in and assess the interior
16 before maybe determining what to do next?

17 A As a firefighter, and especially a
18 captain, you're constantly sizing up the
19 situation. You're starting with the outside,
20 and as you move into the inside, you're doing
21 the same.

22 Q Is it typical at LFR for one captain
23 to request an assignment from incident command
24 for another captain?

25 A No, not at all.

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1 Q And Captain Mahler didn't have an
2 obligation to monitor if Benson got an
3 assignment from, from incident command, did he?

4 A No.

5 Q Okay. Do you believe at LFR that
6 every face-to-face communication in a fire is
7 critical to safety?

8 A No.

9 Q Okay. Have you had experiences where
10 face-to-face communication is not critical to
11 safety?

12 A There is -- There is a lot of
13 face-to-face communications that aren't critical
14 to safety, and, and things that are critical to
15 safety are typically radioed because if they're
16 -- if they're critical to safety at that point,
17 they're critical to the safety of everyone on
18 the scene.

19 Q Did anything you review lead you to
20 believe that Mahler allegedly not responding to
21 Benson interior endangered her life?

22 A I didn't see any evidence of danger.

23 Q Okay. Did anything that Mr. Corrigan
24 had you review from Mahler's deposition change
25 your opinion that her accusation that he

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1 abandoned her and her crew in a dangerous fire
2 that could have killed them was a false
3 accusation?

4 A Nothing changed my mind. Going back
5 to the question of, did he have any obligation,
6 and I would say, absolutely not.

7 Q You also knew when you made your
8 decision that Ms. Benson had been in and out of
9 the warehouse fire without any trouble before
10 Mahler even arrived, correct, based on the
11 radio?

12 A That's correct.

13 Q And you also knew she had exited first
14 before him and there were still firefighters
15 inside at the time she claimed she was abandoned
16 in the warehouse?

17 A That's correct.

18 Q Mahler and his crew and at least some
19 members of other crews were still inside --

20 A Yes.

21 Q -- based on the radio?

22 A Yes.

23 Q And so based on that, it would be
24 impossible for Ms. Benson to claim that Mahler
25 abandoned her and left her inside if he was

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1 still in there when she left; correct?

2 A That would be my position.

3 Q You came to an understanding, at some
4 point, Ms. Benson expressed she was not happy
5 with Ms. Witte's investigation; correct?

6 A Yes.

7 Q Okay. And she filed a motion for
8 injunction and asked for an investigation;
9 correct?

10 A Yes.

11 Q All right. And the City did that?

12 A Yes, they did.

13 Q All right. And Ms. Benson was -- she
14 was given an opportunity to provide whatever
15 information Ms. Gerdes asked her or whatever she
16 wanted to provide; correct?

17 A I believe so.

18 Q Okay. And you were asked whether or
19 not she had -- Or, you were asked about an
20 e-mail on Union representation during the Gerdes
21 interview. To your knowledge, was her Union
22 representative present during her interview by
23 Ms. Gerdes?

24 A I believe so.

25 Q Okay. You said that you had

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1 determined that her story had changed, and you
2 also listened to the audio, not just based on
3 the report; correct?

4 A That's correct.

5 Q And when I say "audio," I should
6 clarify that's the audio of her interview by
7 Ms. Gerdes?

8 A Yes.

9 Q Okay. And just for the record, that
10 audio is -- just for further reference, Exhibit
11 12. Nope. Let me find it. I had all these
12 numbers memorized in June.

13 MS. GUTTAU: Exhibit 22, just for
14 your reference, Mr. Rutzick, when I refer to
15 audio.

16 THE ARBITRATOR: Okay.

17 Q (By Ms. Guttiau) If you go to
18 Ms. Gerdes's report, Exhibit 11 -- So we're back
19 in the red book.

20 MS. GUTTAU: We're at Exhibit 11.

21 Q (By Ms. Guttiau) And about No. 4, in
22 the second paragraph -- I'm sorry. Page 40.
23 All the way in the back.

24 A (Witness complies.)

25 Q Ms. Gerdes includes, from the audio,

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1 that -- at the last sentence -- "Acting Captain
2 Benson stated during her interview that she
3 never felt her crew was facing sufficient safety
4 risk to utilize a Mayday."
5 Was that significant to you?
6 A Well, it, it certainly is counter to
7 the "we could have been killed or injured"
8 statement, yes.
9 Q Okay. So then in -- Let's now turn to
10 Exhibit 23.
11 A (Witness complies.)
12 Q And if you want to keep Exhibit 11
13 kind of handy.
14 MR. CORRIGAN: We're gonna look
15 at what?
16 MS. GUTTAU: Exhibit 23.
17 Q (By Ms. Gutttau) If you want to turn
18 to page 16 of 23 or -- yeah. So this was a
19 transcript of the grievance hearing you held on
20 her grievance regarding an investigation on
21 August 20th, 2021; correct?
22 A Correct.
23 Q Okay. And if you look back on page --
24 If you look back from page fif -- 16 to figure
25 out who's talking and go back to the page

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1 been with the fire department?
2 A I'm going to guess 25 years.
3 Q Okay. So then back on Ms. Gerdes's
4 report, I want to look at page 29.
5 A (Witness complies.)
6 Q And paragraph 83(a), Ms. Gerdes
7 reports that Ms. Benson told her -- Let's go to
8 the -- one, two -- third sentence. "Benson
9 stated she was comfortable staying interior
10 until the low air alarm was activated because
11 she knew the path out. They did not have to use
12 the TIC to exit the building. They could see
13 daylight about 10 to 15 feet from the exit door.
14 Benson stated that T1 was not lost in the
15 building. Benson knew where they were, and they
16 were oriented to exit."
17 Does that seem different than what you
18 had been told at the grievance hearing?
19 A Yes, that's different.
20 Q And you also knew, at this point of
21 the grievance hearing, that none of her crew
22 members had described the conditions as, as bad
23 as she had; correct?
24 A That's correct.
25 Q And none of them had indicated they

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1 before, it indicates that that's Amanda Benson.
2 Do you see that?
3 A Yes.
4 Q Okay. So I want to go to 16, and then
5 the third paragraph down it says "The
6 firefighters."
7 A Okay.
8 Q So in that grievance hearing -- you
9 were present at that; correct?
10 A I was.
11 Q And she stated to you, "The
12 firefighters had to be physically led out of the
13 door because they were so disoriented and did
14 not realize that it was a way out."
15 So then if we want to turn to page 29 of
16 the Gerdes report -- Well, actually, back on
17 that statement, didn't Matt Roberts indicate
18 that he didn't have to be led out?
19 A Yes, he did.
20 Q Okay. And he was her FAO?
21 A Yes.
22 Q So his, his statement contradicted
23 hers; correct?
24 A That's correct.
25 Q Okay. And he's a -- How long has he

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1 had to be led out in any way, did they?
2 A That's correct.
3 Q The bottom line is -- You know, we
4 heard some testimony in the first round, and
5 somebody said Captain Mahler may rub people the
6 wrong way.
7 Would you agree with that?
8 A Yeah. Yes.
9 Q And if a firefighter rubs people the
10 wrong way, does that mean he deserves to be
11 falsely accused of endangering others?
12 A No.
13 Q And so regardless of what we talked
14 about as far as incident command and he said,
15 she said and what -- whether or not he should
16 have talked to her on the inside, aside from
17 that, the bottom line is: Did you find any
18 evidence that Captain Mahler had abandoned
19 Benson, Hurley, and Roberts in a dangerous
20 warehouse fire that could have killed or injured
21 them?
22 A No.
23 Q Okay.
24 MS. GUTTAU: Nothing further.
25 Nothing further, sir, at this point.

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1 and I spoke with Morgan Hurley, who was also a
2 firefighter at the time, who was the recruit
3 assigned to the station and working on both
4 engines, were present. And I believe on this
5 one I also talked with Captain Faust or Chief
6 Faust.

7 Q And did you find that the complaint
8 had any merit? Was Roof talking -- speaking
9 negatively about Ms. Benson because she brought
10 a lawsuit against the City?

11 A Not at all. And I think -- The only
12 conversation that I think this -- that, you
13 know, was taking place at different times where
14 -- No one seemed to -- Captain Faust -- Chief
15 Faust remembered the conversation, but a lot of
16 the details of the conversation that were sort
17 of like -- She -- Ms. Benson reported that
18 Captain Roof said that he would blow his brains
19 out, or something, if he was part of a lawsuit
20 against the City, disparaging the department, or
21 something to that effect. And there were --
22 There were lots of aspects of the conversation
23 that nobody else remembered. It appeared to
24 have corresponded, I think, with an article in
25 the paper about another lawsuit settlement, and

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1 so it was just kind of an observation.

2 But what -- what's been my take and
3 what I've observed from others in the department
4 is that these articles in the paper about the
5 lawsuits have a really -- like, a deep,
6 emotional impact on the firefighters because
7 they feel a commitment to the department and
8 have, you know, a different experience and a
9 positive experience. And it's difficult for,
10 you know, their neighbors and their mom [sic]
11 and everyone else to see these things that are
12 alleged about the department that are so
13 disparaging in the newspaper. So I think that
14 that's -- that was what happened there. But it
15 sounded like it was just sort of a conversation
16 in the apparatus thing.

17 Q Allegation No. 2 here was that Roof
18 called firefighting blue-collar work and said
19 that women don't have the work ethic to do it,
20 and women are being held to standards that they
21 -- are not being held to standards that they
22 should just to do the work in hiring.

23 Just real briefly, did you find that that
24 allegation had any merit?

25 A I didn't, and, in fact, I found that

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1 that the allegation, it was really completely
2 the opposite in terms of what the context of it
3 was. It wasn't at all that women weren't able
4 to do it, as that they were working really hard
5 to come up with different ways to make the
6 requirements of the job accessible to people of
7 all sizes and strength levels.

8 Q And Ms. Benson was alleging that
9 Captain Roof was treating women unfairly and
10 said that they couldn't do firefighting work?

11 A Yes. I think that was the allegation,
12 essentially.

13 Q And what was the truth of that
14 situation that you discovered?

15 A Well, the truth was really the
16 opposite. Everyone I spoke to said that, you
17 know, he has a -- historically had a strong
18 history of being really supportive of women in
19 the fire service, and that he -- that in this
20 particular instance, the context of which this
21 all arose was actually looking for ways to make
22 the job more accessible and that he had spent a
23 lot of time, his own time and effort that he
24 didn't really have to spend working with, with a
25 particularly smaller recruit in this sort of

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1 situation and that --

2 Q And that -- And that recruit was a
3 woman?

4 A Yes.

5 Q And that was who Ms. Benson was
6 pointing to as an example of someone being
7 treated differently by --

8 A Correct.

9 Q -- Roof?

10 A Yes.

11 Q Okay. Number 3 is a report that, that
12 allegedly Brady Papik said that Ms. Benson was
13 not training, and that how -- was somehow
14 raising a safety issue and creating a hostile
15 work environment.

16 What was the nature of that complaint,
17 and what did you conclude, and how did you reach
18 that conclusion?

19 A I think it sort of stemmed, in part,
20 from -- she had this belief, that was later
21 retracted -- that she later retracted, that
22 Woitalewicz and Papik had filed some sort of
23 safety complaint against her for not training,
24 and that there had also been another captain
25 that had had a similar complaint made against

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1 them. But, in actuality, there was no complaint
2 at all made about safety concerns for not
3 training by a captain, and so that was part of
4 somewhat of a retraction on this, I think.

5 But there was a specific instance
6 where, supposedly, the crews were sitting at
7 the, the table and discussing and Papik
8 reportedly said that -- something about Benson
9 that not, not training was a safety concern and
10 that she was creating a hostile work
11 environment.

12 But, in fact, when I talked to
13 everyone, no one at all recalled that aspect of
14 the conversation or him saying that, and I also
15 learned that -- She reported that she had said
16 it to Woitalewicz, and everyone else reports
17 that Woitalewicz had overslept that day or was
18 sleeping in and not even at the table.

19 Q Okay. Number 4, on the next page, is
20 "that Woitalewicz was 'openly' and 'angrily'
21 discussing Amanda's complaint with the crews
22 when he was displaced."

23 This was when he was moved to another
24 station pending investigation?

25 A Correct.

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1 Q And what did you discover about the
2 merit of that complaint?

3 A That it was completely unfounded. In
4 fact, multiple people said that when he was
5 questioned about why he was displaced or what
6 was going on or what was going on at Station 1,
7 that he wouldn't reply, wouldn't -- would --
8 didn't want to talk about it, and --

9 Q Okay. So that kind of ends what you
10 were investigating with Woitalewicz, Roof, and
11 Papik. So did -- With regard to those three,
12 did you find that there was any merit in any of
13 Ms. Benson's complaints about them?

14 A No. I mean, there was -- There was no
15 retaliation. There was no other issues that
16 arose that were actionable or problematic.

17 Q And they're not involved in
18 Ms. Benson's lawsuit, like you said from the
19 beginning; right?

20 A Yes.

21 Q So they're just kind of these outside
22 actors that she believed generally were
23 retaliating against her?

24 A Yes.

25 Q Okay. When we get to No. 5 in Exhibit

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1 44, here's where we get to the ladder training.
2 Can you -- I'd like to talk about this one in a
3 little more detail. What exactly was
4 Ms. Benson's complaint about what Captain Mahler
5 allegedly did bad at the ladder training?

6 A Alleged -- What Captain Mahler
7 allegedly had said was something to the effect
8 that he was happy that Ms. Benson had found a
9 new target for her lawsuit or a new -- what was
10 this [sic].

11 Q And when he -- Who was this new
12 target, supposedly?

13 A Captain Roof.

14 Q Okay. And how did Ms. Benson learn
15 that Captain Mahler allegedly made this comment?

16 A A firefighter assigned to the training
17 division, Jessie Lundvall, had apparently
18 reported it to her.

19 Q Okay. And you're aware that
20 Ms. Lundvall currently has a lawsuit pending
21 against the City of Lincoln?

22 A Yes.

23 Q Okay. And so Ms. Benson wasn't at
24 this training?

25 A No.

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1 Q And this was documented in an e-mail
2 she sent just minutes after learning about it;
3 right?

4 A That's my understanding.

5 Q And what did you do to investigate?

6 A In this situation, I spoke to the
7 chief about it, and he requested an e-mail from
8 Ms. Lundvall, but I also spoke to Mahler, McIn-
9 -- I didn't speak -- yeah, Mahler, McIntosh,
10 Borchers, Hansen, Christen, and Urkoski. I
11 actually didn't speak to McIntosh, but the
12 others I spoke with.

13 Q Did you speak to Mahler himself?

14 A I did.

15 Q And what did he say?

16 A So he said he wasn't talking about her
17 at all, and that they were -- they had been
18 talking about mountain climbing, essentially.

19 Q How would this come up in the context
20 of mountain climbing? Why, why do you think
21 there was a misunderstanding?

22 A It was something like Chief Mahler --
23 or, Captain Mahler is, like, is a climber and
24 that he was graduating on from, what,
25 fourteeners, or whatever, to the next higher

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1 level. It was a, no, I've got my eyes set on
2 new targets, or something like that. The other
3 crew member had asked him about where -- you
4 know, if he had been climbing lately or
5 whatever, and that's how he responded.

6 Q And did anyone corroborate Captain
7 Mahler's description of that conversation?

8 A No. In fact, everyone said that it
9 was a very limited conversation where it was
10 only about mountain climbing.

11 Q That's what I'm asking.

12 A Yes.

13 Q Did the other witnesses confirm that
14 Captain Mahler was talking about mountain
15 climbing?

16 A Yes.

17 Q When you spoke with Captain Mahler
18 about this, did you say that it was Acting
19 Captain Benson who had made the complaint?

20 A No.

21 Q What did you -- How did you describe
22 kind of your inquiry to him?

23 A Well, we came out to talk about --
24 There was -- So there -- I think at that point I
25 had talked with a lot of people about this

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1 investigation, and so I think there was already
2 sort of a -- you know, maybe some -- an
3 awareness that this was happening.

4 So we came to talk to Mahler and I
5 informed him that I was there to talk about
6 complaints of retaliation that had been made and
7 that we wanted to talk about a specific
8 incident.

9 Q So it's possible, I mean, that he knew
10 it was Benson who made the complaint; right?

11 A Yes.

12 Q Okay. Did he seem angry when you
13 spoke with him?

14 A No.

15 Q Did he seem frustrated?

16 A No. Well, I mean, he -- not about
17 this particular incident, no.

18 Q Okay. And so your ultimate finding
19 was this conversation had nothing to do with
20 Ms. Benson and that it was about rock climbing?

21 A Correct.

22 Q Did Jessie Lundvall actually overhear
23 the conversation?

24 A That's my understanding, yeah.

25 Q But no one else corroborated what

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1 Ms. Lundvall believed she heard?

2 A No, and, in fact, she had a detailed
3 description that included a crew member that
4 wasn't a part of the conversation or group.

5 Q Okay. So then the last part here is
6 really kind of the crux of this case, is the
7 complaint about the warehouse fire, and that, I
8 believe, came to you around May 5th; is that
9 right?

10 A Yes.

11 Q Okay. So at the time that that
12 complaint came to you or came to your attention,
13 had you finished this first part regarding the
14 staff at Station 1 and the ladder training or
15 was that sort of ongoing?

16 A It was ongoing.

17 Q And we've looked at the e-mail, a
18 bunch, from Ms. Benson to, to Curt Faust and you
19 and Engler. I believe it's Exhibit 15. If you
20 can flip to it and kind of keep your spot in
21 your Exhibit 44, though.

22 A (Witness complies.)

23 Q Okay. So this is actually -- Exhibit
24 15 is addressed to you and Curt Faust. No --
25 It's addressed to you and Curt Faust.

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1 Did you -- Were you the one who made
2 Chief Engler aware that this allegation was
3 made?

4 A Yes.

5 Q That Captain Mahler had abandoned
6 Ms. Benson and her crew in an unsafe
7 environment?

8 A Yes.

9 Q And what did he ask you -- What did --
10 How did he respond? What were the next steps
11 that were taken?

12 A To investigate it, as well.

13 Q He asked you to investigate it?

14 A Yes.

15 Q Okay. In a little bit of detail, can
16 you walk me through what you did to investigate?

17 A All right. First, I talked
18 extensively with Chief Smith and Acting Chief
19 Faust, who were the incident commander and the
20 safety officer at the fire --

21 Q And what did they --

22 A -- for their accounts.

23 Q What did they tell you? And you can
24 flip back to 44 now, if that helps. Page 6 or
25 -- it's page 5 of the investigation, which is

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1 complaints about Mahler. What did you say?
 2 THE WITNESS: I guess, off the
 3 top of my head, I believe maybe 2014 or prior.
 4 THE ARBITRATOR: You said 2014?
 5 THE WITNESS: Yes, sir.
 6 THE ARBITRATOR: Okay. You're
 7 kind of hard to understand sometimes.
 8 THE WITNESS: I know.
 9 MS. GUTTAU: We'll get you a good
 10 transcript, thanks to Vickie.
 11 THE ARBITRATOR: All right. Go
 12 ahead.
 13 THE WITNESS: I tried to be less
 14 caffeinated, though, just for this purpose,
 15 but...
 16 Q (By Ms. Littrell) Do you know if
 17 Captain Mahler and Acting Captain Benson worked
 18 together since 2014? Have they been assigned to
 19 other fires other than the warehouse fire?
 20 A Yes, quite a few.
 21 Q How do you know that?
 22 A I actually looked into it to see what
 23 the number -- total number of incidents in which
 24 they both responded to were over the years.
 25 Q And do you recall what that number

Page 1290

1 was?
 2 A It was high. I don't recall exactly.
 3 Q More than ten?
 4 A More than ten, yeah.
 5 Q More than 20?
 6 A Yes.
 7 Q More than 30?
 8 A It was more than a hundred.
 9 Q More than a hundred times they've been
 10 at the same incident at the same time?
 11 A I believe so, yes.
 12 Q Since 2014, when she sued him in
 13 federal court?
 14 MR. CORRIGAN: Objection.
 15 A Yeah, I don't -- I don't --
 16 MR. CORRIGAN: (Unintelligible.)
 17 A It was a high number.
 18 MS. LITRELL: Hold, hold on.
 19 THE COURT REPORTER: Hold on.
 20 THE ARBITRATOR: What's the
 21 objection?
 22 MR. CORRIGAN: She didn't sue him
 23 in federal court in 2014. That's a misstatement
 24 of the facts.
 25 THE ARBITRATOR: Okay.

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1 Q (By Ms. Littrell) Since she filed her
 2 federal lawsuit in 2018?
 3 A I don't know the number of events, but
 4 there were quite a few per year. I don't recall
 5 off the top of my head what they were, but...
 6 Q But a lot?
 7 A It was significant, yeah.
 8 Q Okay. And other than this warehouse
 9 fire, do you recall any other incidents at a
 10 working fire where they were not able to work
 11 together?
 12 A No.
 13 Q Any other working-fire incident where
 14 Ms. Benson complained to you that Captain Mahler
 15 create -- was creating an unsafe environment --
 16 A No.
 17 Q -- for her?
 18 A No.
 19 Q When you were investigating
 20 Ms. Benson's complaints about Captain Mahler in
 21 the warehouse -- oh, excuse me.
 22 When Ms. Gerdes was investigating
 23 Ms. Benson's complaints about the warehouse
 24 fire, do you know if Captain Mahler was removed
 25 from duty?

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1 A He was.
 2 Q And where was he moved to?
 3 A He was put on a leave, basically, a
 4 paid leave.
 5 Q Do you know how much the City of
 6 Lincoln paid Captain Mahler to not worked?
 7 A It was about eighteen thousand, almost
 8 nineteen thousand, dollars.
 9 Q And how long was he on leave?
 10 A From early June through August time
 11 frame.
 12 Q You were asked some questions about
 13 Captain Roof maybe misrepresenting what happened
 14 at a fire with Ms. Benson?
 15 A Yes.
 16 Q Do you recall that?
 17 A Yes.
 18 Q Did Captain Roof make
 19 misrepresentations that amounted to accusing a
 20 colleague of putting him at harm?
 21 A No.
 22 Q Did his misrepresentations have
 23 anything to do with safety?
 24 A No.
 25 Q If they were misrepresentations?

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1 Q And then, "getting one of those doors
2 open," that would be the objective?
3 A Correct.
4 Q And so that's Ms. Benson's assignment
5 there, to assist Truck 8 with getting one of the
6 doors open?
7 A Correct.
8 Q Would you read this to mean that she's
9 now, you know, permanently reassigned to all
10 ventilation tasks working for Captain Mahler?
11 A If I was the incident commander, that
12 not how I would have given -- no, it's not.
13 It's not the -- she's not working for him, no.
14 It's a somewhat poorly communicated assignment.
15 Q But she's got the assignment and the
16 task --
17 A Correct. Yes.
18 Q -- like you just described to us?
19 A Yes.
20 Q Okay. And then back to Exhibit 11,
21 page 35, at the beginning of the second full
22 paragraph on that page. Ms. Gerdes
23 communicated, "These supervisor assignments are
24 not implied or created by default, they're
25 expressly declared."

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1 Mayday in the Terminal Building?
2 A Yes, ma'am, there was.
3 Q And was Ms. Benson present for that?
4 A Yes, she was.
5 Q If you believe that another company
6 officer had engaged in conduct that put you and
7 your crew at risk of injury or death, you would
8 report that immediately, wouldn't you?
9 A Yes, ma'am, I would.
10 Q If you were asked by a battalion chief
11 at the scene of a fire where you believed you
12 were in a situation that could have killed or
13 injured you, whether you had a safety concern,
14 you'd have to duty to answer that; right?
15 A Yes, ma'am. I would.
16 Q That was a terrible question.
17 Do you know Captain Mahler?
18 A Yes, I do.
19 Q So you believe him to be a very
20 capable firefighter?
21 A I do.
22 Q How long have you been a captain?
23 A I've been a captain right around ten
24 years.
25 Q Have you responded to fires with

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1 Do you agree with that statement?
2 A Yes, ma'am.
3 Q Just generally, if you are captain,
4 and you've got people working for you, and
5 you're at an incident, and you believe that
6 you're in a situation where you could be killed
7 or injured, your life is in peril, what should
8 you do?
9 A Immediately communicate that threat on
10 the radio, or concern.
11 Q Who would you communicate the threat
12 to?
13 A Incident command.
14 Q Even if you think you might be able to
15 figure it out eventually, should you still put
16 it on the radio?
17 A Yes, ma'am.
18 Q And you can do that through calling a
19 Mayday or initiating emergency traffic; right?
20 A Correct.
21 Q And have you ever called a Mayday?
22 A Yes, ma'am.
23 Q When was that?
24 A I've called two Maydays in my career.
25 Q Okay. Was there a time you called a

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1 Captain Mahler?
2 A Yes, ma'am.
3 Q In your ten years of being a peer,
4 being a captain, is there anything in your
5 experience that would lead you to believe he
6 would intentionally put anyone at risk of injury
7 or death?
8 A No, ma'am.
9 Q I'm going to ask you to turn to
10 Exhibit 19. And this is an affidavit that Ms.
11 Benson submitted in her court case. And I'm
12 going to ask you to go to paragraph 33 of that
13 page 5.
14 A Okay.
15 Q And at the end of paragraph 33 it
16 says, "Mahler abandoned me in a dangerous
17 warehouse fire."
18 Would you agree with me that this is a
19 very serious accusation?
20 A Yes, ma'am.
21 Q In your time at the Lincoln Fire &
22 Rescue, can you recall any other circumstance
23 where one firefighter, a captain or anyone, made
24 a public accusation that another firefighter, a
25 captain or anyone, abandoned them in a dangerous

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1 A Lincoln Fire Station 8. And the exact
2 year escapes me. It's been probably -- gosh, I
3 would hate to even speculate. Probably eight
4 years ago, seven years ago, for about a year.

5 Q What job were you assigned to?

6 A I was assigned to Engine 8. So on the
7 day-to-day, I was not directly assigned to
8 Captain Mahler. However, when I was required to
9 rotate from the engine company to the truck
10 company, I -- when he was at Station 8, for the
11 roughly 12-month time period I was there, I was
12 assigned to the engine, and I did not report
13 directly to Captain Mahler unless I was assigned
14 to the truck for that day, which happened on
15 occasion.

16 Q How many apparatus were stationed at
17 Station 8?

18 A There were three. There was Engine 8,
19 Truck 8, and Medic 8.

20 Q And if each one of those units were
21 fully staffed, you'd have ten firefighters in
22 the station?

23 A Correct.

24 Q Well, not firefighters, but ten staff
25 members of differing ranks; right?

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1 A Yes, sir.

2 Q And in those instances or time periods
3 when you're not on call, there's common areas
4 where the firefighters had access to either a
5 kitchen or to watch TV or to be relaxed while
6 they are waiting to be engaged -- to be called;
7 right?

8 A Yes.

9 Q So you had a lot of interaction with
10 those people assigned to that house on that
11 shift?

12 A Yes, a lot of interaction.

13 Q When you were there, what would be
14 your best estimate of the average daily call
15 volume for the engine?

16 A Again, I'm just estimating. I think
17 it's fair to say ten probably, -ish, if not more
18 at that time. I think ten probably is safe to
19 say.

20 Q So the engine would leave the house
21 about ten times per 24-hour shift?

22 A Yeah, that seems about right.

23 Q And would that be more or less than
24 what the truck company would be called upon to
25 respond to?

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1 A On a typical day, it was probably
2 three times as often as the truck would go out.

3 Q Why is that?

4 A The nature of the responses the engine
5 was required to go to are far more common than
6 the responses the truck would be required to go
7 to. The engine company primarily responded to
8 all medical calls whereas the truck would be
9 more likely to respond to entrapments, rescues,
10 gas leaks, less common occurrences typically.

11 Q And would you agree that Mr. Mahler is
12 a highly competent fire officer?

13 A Yes, I think he's very knowledgeable.

14 Q Did you ever observe instances when
15 you were working with him where he would engage
16 in behavior to ignore or shun people who he was
17 angry at?

18 A Yes.

19 Q Can you describe that for us?

20 A Yes. One instance in particular, the
21 engine was sent to a gas leak call, which is not
22 something that engines would typically go on at
23 the time because we didn't even have monitoring
24 equipment. And he was upset that day about
25 something, I don't even remember what, it's been

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1 so long ago, and he just simply just decided not
2 to go. So the engine had to end up taking the
3 response.

4 Another one -- just off the top of my
5 head, there was another time where he had
6 accidentally left his helmet at the station,
7 which we've all done at one time or another
8 during the course of our careers, at least most
9 people I know have, and somebody, I don't even
10 remember who it was, made a comment to him when
11 he came back, and he literally stormed upstairs
12 and locked himself in the bedroom and didn't
13 come down for the whole rest of the day. And
14 that's the whole rest of the 24-hour shift, so
15 somewhere in the neighborhood of 18 to 20 hours.

16 Q Have you ever observed instances where
17 people tried to talk to him, and if he was mad
18 at them, he wouldn't do it, he wouldn't engage
19 with people?

20 A Yeah. Me. I had asked him about
21 equipment on multiple occasions because I didn't
22 have very much truck experience. And his
23 typical answer to me was he would just kind of
24 blow me off and tell me to go Google it or read
25 the manual. I just did not -- I just had a very

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1 difficult time with that.
2 Q What about not speaking to you or to
3 others at all who made comments to him, did you
4 ever observe that behavior?

5 A I don't recall witnessing him ignoring
6 people in front of me, per se, other than him
7 giving kind of the blatant cold shoulder to
8 people he wasn't very happy with.

9 I don't know if that makes sense or
10 not. I'm sorry.

11 Q Describe for me what you mean by
12 giving the cold shoulder to people he wasn't
13 happy with.

14 A Clearly blowing people off,
15 disregarding their questions, making it clear
16 that he didn't want you on his rig, just general
17 things like that.

18 Q And do you have any specifics you can
19 share with us with regard to people he didn't
20 want on his rig?

21 A Yeah. One time in particular we went
22 to a *threat-of-fire, fire call, not a big deal.
23 There was a little bit of light smoke in the
24 building. And I was unable to get a ventilation
25 fan started, which turned out after we got back

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1 to the station that there was something wrong
2 with it, it had nothing do with me, because I
3 have lots of power equipment at my house and I
4 know how to start engines.

5 But he made it extremely clear in a
6 yelling voice that if I wanted to be on his
7 truck, I better get my shit together or I'm not
8 going to be on it anymore.
9 And there were some other comments, but I don't
10 recall exactly what those were.

11 Q Did you have any occasions to work
12 with Amanda Benson as a firefighter or as a fire
13 captain?

14 A When I was out riding the seat, as we
15 call it, which is filling in for other captains,
16 before I was promoted, I had the opportunity to
17 work with her a couple times in Station 3, I
18 believe.

19 Q Did you ever have any negative
20 interactions with her with regard to her
21 performance or her judgment as a firefighter?

22 A No.

23 Q If the City was required to reinstate
24 her employment, would you have any objection or
25 hesitancy in working with her in the future?

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1 A Not in the least.

2 Q And do you know why she got fired?

3 A I know everything I've read in the
4 papers and, you know, Google searches and that
5 kind of stuff, and just being a friend.

6 Q Well, you understand that at least the
7 City maintains that they terminated her because
8 she made a false allegation about Mr. Mahler
9 that he abandoned her in a dangerous environment
10 and she could have been killed; right?

11 A Yes.

12 Q Even knowing that allegation that the
13 City has made, you wouldn't have any reservation
14 about returning to work with her?

15 A No. I typically judge people on how I
16 interact with them, and I've never had an issue
17 interacting with her in the least.

18 Q In this case, there's an exhibit
19 that's been presented, which is an affidavit
20 that Ms. Benson submitted to the federal court
21 which I'm going to identify as Exhibit 20, R-20,
22 which is in the City's notebook. And in that,
23 she attributes some information to you about
24 incident command.

25 A Okay.

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1 Q And I'm going to ask you some
2 questions about that.

3 Is it your understanding that under the
4 Incident Command System, there can only be one
5 supervisor for a functional path like
6 ventilation?

7 A That's my understanding.

8 Q Now, in this case, we had a situation
9 where at the sort of important time in the fire
10 at the warehouse, the incident commander, Faust,
11 assigned ventilation to Truck 8, which was
12 Mahler's crew. And there's been evidence in the
13 case that Ms. Benson, as the acting captain of
14 Truck 1, asked Mr. Faust whether Truck 1 should
15 assist Truck 8 with ventilation.

16 I'm just laying those facts out to you.
17 I don't know whether you know that or not.

18 If she was advised by the incident
19 commander, "Yes, hook up with Truck 8, you can
20 assist with ventilation, getting one of those
21 doors open," would it be reasonable for her to
22 conclude that she was to find the Truck 8
23 captain and get direction from him on what she
24 should do?

25 A I think it's reasonable to assume

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1 did he do that to certain people more than other
2 people?

3 A Yes.

4 Q Who did he seem to give the cold
5 shoulder to?

6 A People who were not assigned to his
7 apparatus.

8 Q Women and men?

9 A There were no other women at the
10 station at that time, so I can only comment on
11 my co-workers at that time, which were all men.

12 Q And he would give them the cold
13 shoulder?

14 A Yes, routinely.

15 Q Would he try to kind of manipulate the
16 schedule to keep them from being put on his
17 truck?

18 A Routinely.

19 Q My office sent you some exhibits this
20 morning. Did you get those e-mails? Or I think
21 they may have come from Mr. Schrunck.

22 A Yes, ma'am, I have them.

23 Q And Mr. Corrigan asked you if you were
24 a fan of Shawn Mahler, and you said no. And I
25 believe after that, you said you didn't wish him

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1 any ill will.

2 Do you remember that?

3 A That's correct.

4 Q Okay. I'm looking at City's Exhibit

5 No. 53. Do you have that? It's a text message.

6 A Yes, I do. I have it in front of me
7 right now.

8 Q Do you recognize that conversation?

9 A I don't recall it because it's been
10 quite a long time ago, but it sure looks like it
11 to me.

12 Q Okay. And I'll represent to you that
13 there's a link in this first bubble here --
14 well, first -- I'll tell you this:

15 This was provided to the City in Ms.
16 Benson's other lawsuit from her attorneys. And
17 we believe this is a conversation between you
18 and she.

19 This first link is an article about a
20 lawsuit filed by Captain Giles, who you
21 mentioned earlier, in 2017. And here I think in
22 that third bubble down it says, "Shawn, you see
23 that glow in the corner of your eye? That's
24 your career dissipation light. It just went
25 into high gear."

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1 What did you mean by that?

2 A Well, I didn't mean anything by it.
3 It's actually a joke. It's a line from the
4 movie Backdraft that firefighters kind of joke
5 with each other about from time to time. That's
6 pretty much all there is to it.

7 Q What does "career dissipation" mean?

8 A It's a movie quote from the movie
9 Backdraft. There is a couple scenes in the
10 movie -- it's kind of an ongoing firefighter
11 joke over the years. That's pretty much all
12 there is to it.

13 Q So you were making a joke about Shawn?

14 A I couldn't even tell you at the time,
15 it's been long enough ago. But it's a movie
16 quote from the movie Backdraft that was probably
17 an ill-placed joke, but that's all it is.

18 Q And then you say, "I highly doubt he's
19 going to sleep well, that's for sure," and a
20 crying emoji.

21 Were you hoping he wouldn't sleep well
22 after this article was published in the paper?

23 A As I stated before, I wish no ill will
24 upon anybody anywhere.

25 Q You were asked, I think, to conduct --

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1 strike that.

2 Your testimony is that only one
3 supervisor can be assigned to a functional task
4 at a fire incident.

5 Did I state that correctly?

6 A That's my understanding, yes.

7 Q There's been some testimony today from
8 another fire captain, Captain Ripley, that it's
9 not uncommon to have, say, two or three engines
10 assigned to the functional task of fire
11 suppression, fire attack.

12 Would you dispute that?

13 A No, I wouldn't dispute that.

14 Q And that they're each, you know,
15 separate individual units each performing fire
16 attack and each having reporting obligations to
17 the incident commander; correct?

18 A It depends on the size of the
19 incident. If there's an incident of -- well, in
20 my opinion -- I'm not going to dispute Captain
21 Ripley. He's highly respected by myself as well
22 as everybody else.

23 That being said though, depending on
24 the size of the incident, there would be a
25 functional group supervisor depending on where

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1 believe City legal, and then the fire department
2 were working on a memorandum of understanding
3 because I wanted to be removed from the fire
4 station or given a break from that environment,
5 but moving me out would violate the Union
6 contract. So they came to an agreement that
7 they would do an MOU for 90 days and essentially
8 displace me for 90 days, and at the end of that
9 90 days I could make my decision.

10 And I just happened to be injured and
11 had surgery. I was out on surgery leave when
12 the MOU expired. And I believe Kimberly
13 Taylor-Riley's report included -- I got a
14 notification from the mayor -- and there's a
15 clear timeline, so I'm just trying to recall the
16 best I can. The mayor said that the report
17 found no merit, or something along those lines,
18 and requested that I meet with Doug McDaniel and
19 Director Casady --

20 Q And McDaniel was the Human Resources
21 director and Mr. Casady was the Public Safety
22 director over the police and fire department;
23 right?

24 A Yes.

25 So at this point I e-mailed my captain

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1 at the time, Merryman, and told him that I would
2 like to terminate my assignment at Station 8, I
3 did not want to return, that I did not feel like
4 the problem had been remedied and I did not feel
5 like the concerns were being taken seriously, or
6 something along those lines.

7 And then Director Casady and McDaniel
8 had a long meeting with me discussing whether or
9 not -- what it would take to get me to go back
10 to Station 8.

11 And so at that point we just had a new
12 fire chief, Michael Despain. He had just got
13 there and contacted me to meet with me and
14 discuss where I would like to go. And there was
15 a vacancy at Station 3. One of the firefighters
16 there wanted my position at
17 Station 8, so they coordinated a swap. And
18 that's how I ended up at Station 3.

19 I could be missing, obviously,
20 information. But that's what I've got right
21 now.

22 MR. CORRIGAN: To the extent that
23 it hasn't been received into evidence, we would
24 offer Exhibit 103, not necessarily for the truth
25 of the matter asserted but simply as the

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1 background for what happened with the
2 investigation of her complaints initially.

3 MS. GUTTAU: No objection.

4 THE ARBITRATOR: What's your
5 objection?

6 MS. GUTTAU: I said no objection.

7 THE ARBITRATOR: No objection.
8 Okay. Received.

9 (Exhibit No. 103 was received into
10 evidence.)

11 Q (By Mr. Corrigan) Going forward now
12 to -- well, so what happened at Station 3?

13 So at Station 3 I worked under Dan
14 Ripley, had a great working relationship with my
15 crew and my supervisor, was very happy there. I
16 had one issue with Shawn Mahler, and it followed
17 inappropriate touching. There was another
18 officer on the job who hit me in the back of my
19 pants when I was getting up into the ambulance.
20 It was a case of mistaken identity, and he was
21 very upset, apologetic, came out to the fire
22 station, sat down and talked with us, not a big
23 deal. It was handled in-house.

24 And then a period of time later, if I
25 remember correctly, it was a couple months later

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1 maybe, I was approached by Shawn Mahler at fire
2 scene when I was by myself. And he informed me
3 that he had witnessed the interaction and wanted
4 to know why I didn't report that officer. And I
5 was very uncomfortable with the conversation. I
6 didn't think it was appropriate for him to come
7 to me to talk about that. I thought he should
8 come to my officer or report it if he had seen
9 something. And I took it as him reminding me
10 that he was monitoring me and kind of poking at
11 me almost -- my interpretation was that he was
12 saying, well, if you reported me, why didn't you
13 report this guy.

14 Q Why didn't you report that guy?

15 A Because that guy was friendly with me.
16 That guy communicated with me. He was an active
17 part of my Station 3 family. That guy was there
18 all the time. He wasn't intentionally doing
19 something to harm me, whereas Shawn Mahler was
20 not friendly to me, did not like me, did not
21 speak to me. So in my mind, there's a very big
22 difference. The context is everything.

23 Q So was there some -- did you raise
24 this issue with the fire management?

25 A Yes, I brought it to Captain Ripley.

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1 negatively impact your crew. But there was less
2 of a chance of that at 1 because of how many
3 people that we had there, and we didn't have a
4 medic unit. So when that opening came open,
5 that's --

6 Q You transferred there?

7 A Yes.

8 Q When did the captains promotional
9 process start that you were eligible for?

10 A The process I believe started in the
11 fall of 2019. Yeah, it would have been the fall
12 of 2019.

13 Q Then did you get on the list?

14 A Yes.

15 Q And did you act?

16 A Yes, I did.

17 Q Did you ever get promoted?

18 A No, I did not.

19 Q What's your understanding of the
20 promotional process for captains in the sense
21 that once the list is certified, what does the
22 City do to fill vacancies in the captain rank?

23 A The City pulls from the eligibility
24 list. And it goes by shift. So there's a large
25 list of all the candidates. And then if it's A

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1 shift, they pull the top off of that list from A
2 shift, B shift and C shift. And at one point I
3 was the top on C shift for the rest of my time
4 at LFR.

5 Q Meaning that you had the -- you were
6 the top ranking person still on the list who
7 hadn't been given a promotion?

8 A Yes, on C shift. So every day I was
9 filling a vacancy for a captain pretty much.

10 Q And if a promotion were to be made on
11 C shift, you would have received the next
12 available promotion regardless of whether the
13 department -- it's without any discretion, isn't
14 it?

15 A The next person in line would have
16 whether they were on A, B or C shift.

17 Q And so the promotion to captain is a
18 rank-for-rank basis, meaning the City has an
19 obligation to promote the next person up when
20 there's a permanent vacancy that occurs; right?

21 A Yes.

22 Q And did the list ever expire while you
23 were on it?

24 A No.

25 Q Okay. Now, so because of this

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1 voluntary transfer from Station 3, and your
2 acting as Captain 1 on the truck company,
3 Station 1, now tell us what was going on in
4 April of 2021 that led to your complaint that is
5 embodied in Exhibit 104?

6 A Okay. So I had been injured again and
7 had another surgery. And while I was on injury
8 leave, a captain for Engine 1 named Chad Roof
9 had transferred out prior to my arrival there,
10 and then there was a vacancy on Engine 1 again
11 while I was on injury leave, and he transferred
12 back in. When I returned back to the station,
13 he was there, and there was some butting of
14 heads, and it sort of escalated to the point
15 where he had made comments regarding people who
16 had lawsuits against the City of Lincoln. He
17 had made comments that I thought were just
18 inappropriate in general. They were comments
19 about female -- the ability of female
20 firefighters and whether or not our physical
21 requirements to get on the job were too lax.
22 And that was kind of the nature of the issue. I
23 had some issues with his immediate subordinate,
24 whose name is Matt Woitalewicz, and I had
25 communicated with Kurt Faust, who is my captain,

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1 some of these concerns.

2 Q So he was the captain of Truck 1. And
3 because he was acting battalion chief, you were
4 the acting captain; right?

5 A Yes. At some point, Matt Woitalewicz
6 transferred over to the truck, and while I was
7 acting captain, he became my direct subordinate.
8 And there were issues involving Matt complaining
9 about training and Chad Roof making comments
10 about officers. And it was kind of like public
11 -- public attempts to kind of attack me in front
12 of --

13 Q When you say "public attempts," you're
14 talking about within the station house?

15 A Yes. I would deal with kind of being
16 ganged up on. And I had indicated to Chief
17 Engler some of the stuff that was going on. And
18 he -- I can't remember exactly at this time --
19 I'm sure it's in documents somewhere. But I
20 believe he had Chief Faust and Chief Smith
21 counsel Chad maybe. And then I was worried that
22 he would get upset with me for this and then
23 basically make my life worse at the fire
24 station. And they assured me that this wouldn't
25 happen. And by "they," I mean -- I believe it

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1 believe that I should be able to address problem
 2 behavior at work that interrupts my ability to
 3 work, interrupts my ability to lead. At the
 4 time, I was an acting captain, and I was dealing
 5 with a subordinate who was being inspired to
 6 partake in this behavior that undermines my
 7 ability on the job. And the rumor mill is toxic
 8 in the fire service. And I just was so tired of
 9 what felt like constant retribution for asking
 10 to be left alone. My request was just fix this
 11 so I can be left alone, I don't want to be
 12 talked -- like I don't want to be communicated
 13 with like this by my peers, by my supervisors, I
 14 just want to be treated like everybody else.
 15 And the communications that appeared to still be
 16 happening undermined that.
 17 Q So the complaint that you made that's
 18 embodied in Exhibit 152, that was purely based
 19 off of what Ms. Lundvall had told you; right?
 20 A Yes.
 21 Q The next thing that happens is the
 22 warehouse fire; right?
 23 A Yes.
 24 Q So if you go back to -- we'll go back
 25 to Exhibit 109. That's the transcript of the

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1 audio.
 2 A Okay.
 3 Q Where were you when you got that call?
 4 A We were approximately 48th and
 5 Holdrege. I had the crew out at the community
 6 college doing captain-initiated training, and so
 7 we were driving back to our area.
 8 Q And the call came in, so you jumped
 9 the call, as they say, is the jargon?
 10 A Yes.
 11 Q What does that mean?
 12 A Well, I had not pressed a button to
 13 put us back into service yet because we were
 14 still driving that direction. And because of
 15 that, the CAD system did not dispatch us onto
 16 that call even though that would have been Truck
 17 1's call.
 18 Q So had you been in service, you would
 19 have been dispatched there?
 20 A Correct. And not only that, we were
 21 very close.
 22 Q So you heard the call on the radio,
 23 put yourself in service, and went out there;
 24 right?
 25 A Yes.

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1 Q Why don't you tell us what you think
 2 happened?
 3 A We arrived on scene. And Truck 5 I
 4 think had initial command. Battalion 1 had come
 5 in right with us pretty much. We met Truck 5 at
 6 an intersection, 47th and Superior, and then we
 7 blocked for them so they could go through. So
 8 that's how close we all were. I believe my
 9 initial assignment was to check for extensions.
 10 So I had Matt Roberts and Morgan Hurley. And
 11 Morgan Hurley is a recruit.
 12 And so we geared up, grabbed our tools
 13 and made entry, and made our way towards where
 14 the bulk of the incident was, which would be the
 15 trash compactor. Had poor visibility to the
 16 point where the fire attack crews could not see
 17 that they were missing the fire with the water.
 18 So when you looked at it with a TIC, you could
 19 see the heat exchange, you could see the water
 20 going over top of the flames. And so there was
 21 several TICs, the thermal imaging cameras.
 22 And we assisted the nearby -- well, my
 23 firefighter, Morgan, assisted the nearby hose
 24 line so that they could actually see where the
 25 fire was at and see that they were hitting it.

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1 And during that point, I was on the
 2 Bravo side of the trash compactor, and I took
 3 the TIC from Morgan because I saw a significant
 4 amount of heat underneath an object, and I was
 5 not sure what the object was because the
 6 visibility was so bad. And then I took the TIC
 7 around to the side, which would be the Bravo
 8 side of the trash compactor, and looked upward
 9 and saw fire above that same portion.
 10 And so I believe it was George Gasper.
 11 I don't know what -- he might have been on
 12 Engine 10 that day, but he was there. I got
 13 him, or somebody, to bring a hose line over to
 14 the side, and then I continued with the TIC and
 15 could see like little hot spots, residual hot
 16 spots, what appeared to be like down like a
 17 pile, or which I found out later was a ramp.
 18 And so at this point we still can't see.
 19 It was my impression -- what I felt
 20 like was you could see an outline of a person
 21 when you're about five feet away from them, but
 22 you had to be right up into their face to be
 23 able to read the information on their helmet.
 24 So you could see the outline, but you had to get
 25 really close to see details. And it just --

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1 there was so much lingering smoke, we just
2 needed it out.

3 And so Kurt called me on the radio at
4 some point asking for an update, and I told him
5 that I think it's confined to the pile, I
6 believe, something along that line. And then we
7 continued to talk on the interior, Matt Roberts
8 and myself, about the need for ventilation.
9 I contacted Kurt on the radio and said, hey, we
10 need ventilation. My interpretation was that we
11 were not going anywhere until we got the smoke
12 out there because it just made everything
13 difficult, it made things more dangerous, and
14 why keep working when you can't see what you're
15 doing.

16 So at that point he assigned Truck 8 to
17 ventilate. And I don't remember how long it
18 was. There was a break in the radio. And at
19 that point I offered
20 to -- I offered -- asked if Truck 1 -- if he
21 wanted
22 Truck 1 to assist.

23 Q Look at page 3 of -- it's sheet 3,
24 page 10.

25 A (Witness complies.)

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1 A Either before or right after when he
2 said to hook up with Truck 8. I don't remember
3 -- they've had me listen to the recording so
4 many times, I don't remember if I heard the
5 initial "Truck 8 assignment to ventilation" or
6 not.

7 Q Did it matter to you?

8 A No.

9 Q You knew the ventilation was the
10 important thing, it wasn't who was going to do
11 it; right?

12 A Yeah.

13 Q So the response, at least according to
14 the transcript, is, "Yeah, if you can, if you
15 can hook up to Truck 8, you can assist with
16 ventilation, getting one of those doors open."

17 We've had this conversation with a lot
18 of witnesses.

19 A Yes.

20 Q When that language was communicated,
21 what did you understand?

22 A Well, when I was first asked about
23 this -- and I have to look at my initial
24 interview about it --

25 Q With who?

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1 Q So you previously on the radio said,
2 we need some sort of ventilation?

3 A Yes.

4 Q And Mahler gets -- Truck 8 gets
5 assigned the ventilation task?

6 A Yes.

7 Q And you asked, "Truck 1 to command,
8 would you like us to assist with ventilation"?
9 Right?

10 A Yes.

11 Q And what was your purpose in doing so?

12 A I figured that there were so many
13 people in -- where we were at focusing on
14 missing this fire, that we just needed resources
15 to help orchestrate ventilation. I didn't know
16 what the route would be. I didn't know what the
17 opposite side of the building looked like. And
18 we have extra fans, the truck companies have
19 fans. I didn't know what they were going to do,
20 but I figured since it was such a large
21 building, you would need a group of people in
22 order to execute it.

23 Q And you knew when you requested that
24 or made that ask to the incident commander that
25 Mahler was assigned to ventilation; right?

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1 A Torrey Gerdes.

2 Q So the City never interviewed you
3 about this?

4 A No, no one ever talked to my about
5 this.

6 Q When you gave the e-mail to Kurt
7 Faust, he sent it up the chain of command, and
8 then you were never questioned about it?

9 A Nobody else ever talked to me about it
10 until Torrey Gerdes.

11 Q Okay. So what did you understand that
12 communication to mean at the time that it took
13 place?

14 A During my initial interview, I
15 probably -- I could have had better recollection
16 of what was new information to me and what
17 wasn't. I had never read or seen the radio
18 traffic from the fire to the Torrey Gerdes --
19 she provided it to me a couple days before. So
20 after listening to it so many times -- I'm not
21 the best historian on when -- if I heard things
22 first at the fire or later. I believe when I
23 talked to Torrey Gerdes, I missed the second
24 half of that transmission and just heard -- I
25 believe I remember hearing, "if you can hook up

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1 with Truck 8, you can assist with ventilation."
2 And I do not remember hearing "getting one of
3 those doors open."

4 Q But you said, "clear"?

5 A Yes.

6 Q And by saying "clear," that's
7 acknowledging the assignment; right?

8 A Yes.

9 Q What happened once that communication
10 took place between you and Mr. Faust? What did
11 you do next?

12 A At this point I collected Hurley and
13 Roberts and we left the structure. It was still
14 poor visibility.
15 From where we were at the compactor, the smoke
16 was very thick, and you could not see the door
17 from the trash compactor. And initially we had
18 to walk towards -- like on the hose line. Per
19 Matt Roberts, he said, this is great training,
20 whatever, for Morgan, this situation is why you
21 never just walk to a door. So we showed her how
22 to walk out over the hose line and said, see,
23 when you get close enough to the door, you can
24 see the light, and then you walk out.

25 So we walked out. We kind of walked

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1 away from the building. And then I turned to my
2 right, which would have been towards the
3 Alpha/Bravo corner of the building. And at that
4 point, I believe that that is when I saw Truck 8
5 crew in that corner, and so I started walking
6 towards that corner.

7 Q When you say you saw Truck 8 crew, can
8 you tell us who you saw?

9 A I saw Mahler and I thought Trent
10 Borchers. Steve Dyer might have been there.
11 But I thought there were only three of them.

12 Q Well, Mr. Love was in the crew. Was
13 he somebody that you remember seeing?

14 A I don't remember seeing Love the whole
15 fire.

16 Q So what did you do when you say the
17 Truck 8 crew of Mahler, Borchers and maybe Dyer?

18 A I walked towards them. When I got
19 closer to them, Mahler -- I was walking towards
20 them. They were walking towards the direction I
21 had come from. And Mahler stepped around to
22 walk around me, and so I turned around and
23 walked alongside him until I could get kind of
24 in front of him to stop and said, hey, Truck 1's
25 assigned to assist you with this, something

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1 along the lines of, what's your game plan, what
2 do you need.

3 Q Were you on air at the time that you
4 had that conversation?

5 A I don't remember. I remember on one
6 of the exits -- usually we pop our regulators
7 off but still stay masked up. So we could have
8 been popped off there.

9 Q But still be masked up?

10 A Yeah, could have been. Yes.

11 Q What about Mr. Mahler?

12 A I don't remember.

13 Q Once -- so when he walked around you
14 and you caught up in front of him, was that the
15 first time you actually said anything to him?

16 A I don't remember. I might have
17 started talking to him initially, and I think I
18 just chalked it up to I need to talk louder.

19 Q In your experience with him, has he
20 ever engaged in activity or shown signs of
21 having a hard time hearing you?

22 A Not really to me directly. I know
23 like just through statements, I know we both
24 have hearing problems.

25 Q So you get to the point where you're

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1 in front of him to stop him and say, Truck 1 is
2 assigned to assist you, what's your plan, or
3 something to that effect.

4 What happened?

5 A He said something along the lines of,
6 Truck 8 is going to open an overhead door, and
7 then kept walking. So I turned around, grabbed
8 Hurley and Roberts. They were standing -- like
9 I remember making contact -- like going interior
10 with Morgan Hurley right by the door that we had
11 walked out of, that door. And I grabbed her and
12 walked alongside the wall to the left, and I
13 told her like kind of what we were doing is
14 checking the overhead. So I wanted to make sure
15 that the door that they were opening didn't have
16 a whole bunch of rubbish like piled up behind it
17 so there would be air flow. It didn't really
18 matter, because by the time we had gotten close
19 to that door, it was already opening so you
20 could kind of see the sunlight around the door.

21 I then ran into who I thought was Trent
22 Borchers right inside there. And he said
23 something about was this the right door,
24 something along those lines. There was an
25 exchange, is this the right door, and then a

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1 quick -- I don't know. And I don't know how
 2 Trent left, whether he went under the door or
 3 whether he -- I don't know.
 4 But at that point I turned with Hurley, we
 5 walked back alongside the wall and went exterior
 6 back out the door we came in, and we were like
 7 arm on the wall, like within two or three feet
 8 of the wall the whole way, and then went out.
 9 And at that point --
 10 Q I'm going to stop you. I want to ask
 11 you to -- if you look at the overhead in the red
 12 book, Exhibit 16. And go to page 2 of Exhibit
 13 16, R-16.
 14 A (Witness complies.)
 15 Okay.
 16 Q The door that we're talking about
 17 getting open, which one -- is it depicted on
 18 this photograph?
 19 A It's kind of a guess. This photograph
 20 is different from the day of the fire. I
 21 believe it was one of the, like, smaller
 22 overhead doors to the left where there's two
 23 right there. I believe one of those had a
 24 tractor trailer in front it, or something in
 25 front of it on the outside.

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1 a comment about whether or not Roberts had seen
 2 the skylight. Roberts grabbed me at one point
 3 and asked me if Mahler knew about the skylight.
 4 So I turned around to Roberts, and then I turned
 5 back around to Mahler, grabbed Mahler, got my
 6 face right to the side of his face and said,
 7 Roberts saw a skylight, what do you think, or
 8 something along that line.
 9 And after that, he didn't really say
 10 anything.
 11 I turned back around to Roberts. And by the
 12 time I turned back around to Mahler, I was just
 13 seeing him kind of disappear in the smoke. And
 14 so at that point Roberts was still asking, hey,
 15 what are we doing, what's our assignment. And
 16 we had walked in at an angle -- like that big
 17 door, if my memory serves me correctly, when you
 18 walk into that big door, the trash compactor was
 19 slightly to the right. And when we had walked
 20 in, I wasn't entirely sure if we had walked more
 21 straight or more to the left or what. But at
 22 that moment I wasn't oriented, and I realized I
 23 wasn't oriented. And I realized that it was a
 24 safety issue. So I grabbed the TIC and was
 25 facing what I believed to be -- because when you

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1 Q But your egress and your entrance were
 2 from the large overhead door?
 3 A Yes.
 4 Q The first one in the middle of the
 5 page?
 6 A Yes. I believe so, yes.
 7 Q So going in that door and going over
 8 to the smaller doors to the left?
 9 A Yes.
 10 Q All right. As we look at page 2.
 11 And after you and Firefighter Hurley
 12 exited the structure, after the door got open,
 13 what happened after that?
 14 A After we exited?
 15 Q Yes.
 16 A Truck 8 and like Roberts and Hurley
 17 and myself, we were all standing in front of
 18 that big door. And I was trying to communicate
 19 with Shawn. I was trying to ask him -- well, I
 20 was asking him what the plan was, something
 21 along those lines, as they started to walk
 22 interior. So I started walking interior with
 23 Mahler.
 24 And as we went interior, I continued to try to
 25 talk to him, find out what his plan was. I made

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1 go in there, I'm forward, then I'm backwards,
 2 then I'm forward. I could be facing way left of
 3 where I think I am; I could be facing way more
 4 right of where I think I am. I grabbed the TIC,
 5 scanned, see the fire to my right, and I see
 6 people next to it, and I assume that that's
 7 Truck 8.
 8 So I take Morgan and Roberts to the
 9 trash compactor, make contact with who I think
 10 is there. At this point, my time of being
 11 disoriented was seconds. I just realized that I
 12 was, and oriented because I knew trash
 13 compactor, I've already been there. That's
 14 where all the hoses are. That I know. I know
 15 where the door is from that. So we get to the
 16 trash compactor. I believe I see who I believe
 17 is Borchers. I ask where Mahler is. He says, I
 18 don't know. At this point he said something
 19 along the lines of, I'm going up, and he started
 20 climbing on top of the trash compactor, handed
 21 me his Halligan, starts climbing up the
 22 compactor --
 23 Q What is that?
 24 A The Halligan is -- it's like a metal
 25 tool, like --

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1 Q Multi tool, like an axe or a poker?

2 A Yeah. It goes with an axe. It's used
3 to pry things open. It's used for a lot of
4 things, but it usually goes with an axe. It's
5 just a kind of large, clunky tool.

6 And he handed me the Halligan. I
7 believe Morgan was -- she had gotten down, kind
8 of on the ground in front of me, and she was on
9 a hose line or something.

10 And I called for a hose line. Hose line came
11 over to the side. I helped get the hose line up
12 to Borchers. And then shortly around this time,
13 Roberts' low air alarm started going off, so I
14 took Hurley and him and we walked out.

15 Q And you reported that on the radio?

16 A Yes.

17 Q How many times do you think you
18 approached Mahler inside the fire and asked him
19 whether he was going to have any direction or
20 whether he needed you to do anything?

21 A Not talking about the outside, it
22 started when we were just outside the door and
23 then we were walking in. And I just kept kind
24 of saying things as we were walking in, numerous
25 things, what's your game plan, what do you want,

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1 what do you think about this, numerous times.

2 Q And did he ever respond to you?

3 A No.

4 Q Other than outside the fire when he
5 said that we were going to open some doors, did
6 he ever say anything to you after that other
7 than when he exited the building?

8 A At our exchange?

9 Q When you exchanged, took over?

10 A No, he did not say anything after,
11 "Truck 8 is going to open some overhead doors."

12 Q There's been some testimony about the
13 City's objection to the use of the word
14 "abandon."

15 At what point -- or what things
16 happened that led you to believe that you had
17 been abandoned by
18 Mr. Mahler?

19 A My repeated questions to him, him -- I
20 took -- when I actually physically grabbed him
21 to ask about the skylight, he faced me. Like I
22 felt like he was hearing me. And then his
23 decision to not say anything at all and then
24 just completely walk away, that is what I
25 constituted as "abandoned." He knew -- in my

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1 mind, he knew -- it was unmistakable at that
2 point that I was trying to get direction from
3 him, and he just walked away.

4 Q Did he ever say to you on the exterior
5 of the fire that, if you need an assignment, you
6 need to contact incident command or you should
7 contact incident command?

8 A No.

9 Q No words to that effect?

10 A No.

11 Q When was the first time that you had
12 heard that he made that comment?

13 A Maybe the Gerdes report.

14 Q And you got a copy of that in August
15 of 2021 prior to your grievance hearing; right?

16 A Yeah.

17 Q And if he had said that to you, would
18 you have done anything? Would you contact
19 incident command at that point?

20 A Yeah, I would have -- I didn't know
21 why he wasn't communicating. And I kept
22 attempting to make contact with him, and even
23 attempted to continue to find him by going
24 towards the trash compactor. That never would
25 have happened if he would have made it clear

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1 from the beginning that I needed to contact
2 Battalion 1.

3 Q You wouldn't have taken the crew back
4 inside; right?

5 A Correct.

6 Q Unless Battalion 1 told you to?

7 A Correct.

8 Q Why didn't you call a Mayday?

9 A I didn't think I needed to.

10 Q Have you ever call a Mayday?

11 A No. I've been there when one was
12 called, but it's not something anybody wants to
13 be involved with. I think -- in my experience,
14 people are pretty resistant to call them. But I
15 was able to orient, so why would I have needed
16 -- I didn't need rescue. I could still
17 problem-solve my way. I was attempting to
18 anyways.

19 Q The fact that you didn't need rescue,
20 that doesn't mean that you didn't feel as if you
21 had been abandoned, did it?

22 A Say that again.

23 Q The fact that you didn't need to be
24 rescued didn't change the fact that you felt you
25 had been abandoned?

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1 sent him, or did you go through it with him
 2 before you sent it?
 3 A No. We had just talked about it on
 4 the phone before, so --
 5 Q Did you explain to him that you
 6 thought he was your supervisor at that fire when
 7 you were trying to communicate with Mahler?
 8 A I'd have to look at the e-mail to see
 9 it verbatim.
 10 Q Do you want to look at Exhibit 111?
 11 A Yes.
 12 (Witness reviews document.)
 13 A Yeah, just in the second -- at the end
 14 of the second paragraph --
 15 Q Okay.
 16 A -- when I basically say, "Reassign
 17 Truck 1 to Truck 8."
 18 Q But did you talk to Mr. Faust about
 19 that, that you felt that you were assigned --
 20 based on his communication of radio traffic,
 21 that Mahler was going to be directing you in
 22 that fire for any reason?
 23 A Yes.
 24 Q Did he ever tell you that that wasn't
 25 the case, that you were just mistaken about

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1 that?
 2 A No, he never told me that.
 3 Q Had either one of you listened to the
 4 radio communication before you sent the
 5 complaint?
 6 A No.
 7 Q So there's been a lot of questioning
 8 of witnesses as to whether -- if they thought
 9 they were in danger, wouldn't they contact
 10 incident command at the fire, call a Mayday or
 11 get on emergency traffic, and the fact that you
 12 didn't do those things in the manner that was
 13 alleged somehow affects the credibility of your
 14 accusations.
 15 What is your response to that?
 16 A There's no need to call a Mayday when
 17 you problem-solved the issue already. And my
 18 decision -- there's no management policy stating
 19 when that has to happen. And, you know, after
 20 all this time, to assert that when -- I
 21 continued to ride the seat as an out-of-grade
 22 captain until my termination, and not once did
 23 anyone come to me and tell me I had done
 24 anything wrong.
 25 Q So from April -- May 5th you sent the

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1 complaint; right? Of '21?
 2 A Correct.
 3 Q And they gave their determination to
 4 you on the 26th of May at that meeting with Ms.
 5 Witte and, I believe, Chief Smith; right?
 6 A Correct.
 7 Q And you filed a grievance -- you went
 8 to the Union and asked the Union to assist you
 9 with filing a grievance requesting a thorough
 10 investigation of that; right?
 11 A Yes.
 12 Q And that if anybody violated work
 13 orders, they should be disciplined; right?
 14 A Correct.
 15 Q And then you sought a motion for a
 16 temporary injunction about roughly the same
 17 time; right?
 18 A Correct.
 19 Q During all that period of time, you
 20 were continuing to show up to work roughly ten
 21 days a month, 24-hour shifts as captain?
 22 A Correct.
 23 Q On Truck 1?
 24 A Truck 1 and then other rigs. When
 25 Mark Majors was promoted, Kurt Faust no longer

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1 took that position, so he went back to Truck 1
 2 and I was displaced, and I was captain at other
 3 units across town. But yeah, every day I was an
 4 acting captain somewhere.
 5 Q And that continued after you were
 6 interviewed for ten hours or so by Ms. Gerdes?
 7 A Yes.
 8 Q And during the pendency of the time
 9 that her report was pending and your motion for
 10 the temporary injunction; right?
 11 A Yes.
 12 Q We talked with Mr. Ripley, Captain
 13 Ripley, about his opinions about incident
 14 command. You cited him in your affidavit, your
 15 second affidavit, Exhibit 20 in the red book as
 16 being a source -- and you don't need to find it
 17 -- that he was a source of some information
 18 regarding your understanding of the ICS process;
 19 right?
 20 A Yes.
 21 Q Why did you go to him?
 22 A I trusted him. He is very by the
 23 book. He ran things -- he always ran things
 24 appropriately and managed things so effectively.
 25 Q And did you also seek out advice on

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1 the incident command system from Mr. Hadfield?
 2 A Yes.
 3 Q And was he somebody that -- he's also
 4 somebody you retained as an expert for your
 5 federal litigation?
 6 A Yes.
 7 Q Did you make all this up in order to
 8 try to win a lawsuit?
 9 A No.
 10 Q Were you lying about Shawn Mahler to
 11 get money?
 12 A No.
 13 Q Speaking of that, after you were
 14 terminated, what did you do for work?
 15 A Once I was terminated, I got a job in
 16 Omaha at the Level 1 Trauma Center called Bergan
 17 Mercy, and I work in their emergency department
 18 as a paramedic. And I also sometimes teach
 19 paramedic students at Southeast Community
 20 College.
 21 Q But have you suffered a wage loss --
 22 THE ARBITRATOR: Do you currently
 23 hold that position?
 24 THE WITNESS: Say that again.
 25 THE ARBITRATOR: Do you currently

Page 1518

1 hold that position?
 2 THE WITNESS: Yes.
 3 Q (By Mr. Corrigan) Have you suffered a
 4 diminution in your wages?
 5 A Yeah. I took -- I believe, if I
 6 remember correctly, it's about -- based off of
 7 what I would have earned if I would have
 8 completed my 2021, I'm on par by my estimate to
 9 have about a 60 percent pay cut.
 10 Q And you never went to the media with
 11 this information?
 12 A No.
 13 Q And you don't have any idea how the
 14 fire blog and all the other people who wrote
 15 articles about it, the local Journal Star
 16 newspaper or other outlets, how they got that
 17 information, do you?
 18 A I was told by my attorney at the very
 19 beginning that when things would get filed,
 20 sometimes the news would pick them up, sometimes
 21 they wouldn't. And she told me this because
 22 it's public information and because I have a lot
 23 of anxiety about that sort of thing. So every
 24 time that there was something, they would -- my
 25 attorney would let me know so that I could brace

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1 for it.
 2 I never, ever talked to media myself.
 3 Q And did you ever direct anybody to do
 4 it for you?
 5 A No.
 6 Q So you met with Ms. Witte and the fire
 7 chief -- and I'm talking about Exhibit 115 now,
 8 the meeting that you had.
 9 And I'm going to ask you to go to page
 10 6 of that exhibit and look at page -- sheet 6,
 11 page 19 beginning at line 25 there and then
 12 going up to line 20 on the opposite column --
 13 I'm sorry -- page 20 on the opposite column.
 14 A Okay.
 15 Q This is where you're asking Aishah,
 16 "What is being done about the fact that Mahler
 17 walked away from me in a fire scene?"
 18 Do you see that?
 19 A Yes.
 20 Q What was your impression at that point
 21 of what the City was going to do about this?
 22 A I believed that they were going to do
 23 nothing about it. And my biggest concern was
 24 that this would be an escalating issue and that
 25 it would continue to happen and that something

Page 1520

1 really bad was going to happen.
 2 Q Your concern was the potential for
 3 danger because of the failure to communicate?
 4 A Yes.
 5 Q All right. Now -- and you didn't
 6 write any of the newspaper articles; right?
 7 A No.
 8 Q And you didn't write the briefs of
 9 your attorneys; correct?
 10 A No.
 11 Q I'll ask you to go to Exhibit 132,
 12 which is Mahler's declaration that was submitted
 13 on the motion.
 14 A (Witness complies.)
 15 Okay.
 16 Q Now, with respect to Mr. Mahler, you
 17 wouldn't dispute the testimony we've heard from
 18 witnesses throughout this matter that he is an
 19 exceptional or a competent captain; right?
 20 A Correct.
 21 Q Look at page 2, his statement.
 22 A (Witness complies.)
 23 "I did not ignore or avoid Ms. Benson
 24 at the incident on April 26, 2021."
 25 In your judgment, is that an accurate

Page 1537

1 Q Okay. But ultimately, the City did
2 promote Faust?
3 A Yes.
4 Q But in terms of initially when you
5 talked to him about this and Mahler's conduct at
6 the fire and reporting it, you felt like he was
7 supporting you, didn't you?
8 A Yes.
9 Q And he didn't raise any issues with
10 your concern that you were actually working
11 under Mahler's supervision once he assigned you
12 to assist with ventilation?
13 A No. And he had ample opportunities to
14 tell me that I was mistaken about that.
15 Q That's certainly what he testified to
16 later, that he did not intend to make Mahler the
17 group supervisor --
18 A Correct.
19 Q -- in this proceeding?
20 A In this proceeding, that's what he
21 said.
22 Q Whether he intended it or not, that's
23 what you understood to be happening at that
24 time; right?
25 A Yes. And he never told me that it was

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1 -- like he never told me that he didn't agree
2 with me. I believe the first time I heard of --
3 when he was deposed in this case, I believe that
4 he had made a statement along the lines of he
5 actually believed that he had assigned Mahler
6 the group supervisor until he listened to the
7 radio. And I had never gotten to listen to the
8 radio until the Torrey Gerdes investigation, so
9 I'm not sure.
10 Q Did he ever tell you prior to your
11 termination that he was afraid to work with you?
12 A No.
13 Q And prior to him being promoted, did
14 he ever tell you that?
15 A No.
16 Q What is it that you're asking the
17 arbitrator to do in this case?
18 A Help right some of this wrong, help
19 make me whole again.
20 MR. CORRIGAN: That's all the
21 questions I have.
22 (Discussion off the record.)
23 (Recess taken.)
24 THE ARBITRATOR: I have a
25 question.

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1 Why didn't you think it was appropriate
2 to call a Mayday?
3 THE WITNESS: Because I was able
4 to orient myself.
5 THE ARBITRATOR: Okay. And I
6 know it will be in the transcript. But the
7 question, what do you want me do, tell me again,
8 slowly.
9 THE WITNESS: It was kind of
10 two-part. And I said to help right this wrong
11 and to help make me whole again after this.
12 (Discussion off the record.)
13 THE ARBITRATOR: We'll start at
14 9:30 on the 22nd.
15 (At 3:50 p.m., the proceedings were
16 continued to August 22, 2022.)
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1 FEDERAL MEDIATION AND CONCILIATION SERVICE
2 BEFORE ARBITRATOR STEVEN RUTZICK
3
4 LINCOLN FIREFIGHTERS) FMCS CASE NO.
5 ASSOCIATION, IAFF LOCAL) 22103-00847
6 644, and AMANDA BENSON,)
7)
8 Grievants,)
9)
10 vs.) VOLUME VII
11) PAGES 1540-1796
12 CITY OF LINCOLN,)
13)
14 Respondent.)
15)
16)
17
18 ARBITRATION HEARING held before
19 Arbitrator Steven Rutzick (via Zoom), with Sally
20 R. Parrack, RPR, CSR and Notary Public for the
21 State of Nebraska, counsel and all parties
22 present at the City-County Building, 555 South
23 10th Street, Suite 300, Lincoln, Nebraska,
24 beginning at 9:30 a.m., on the 22nd day of
25 August, 2022.

*** **

A P P E A R A N C E S

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ALSO PRESENT: Mr. Ryan Moser, Vice President
IAFF Local 644; Mr. Dave Engler, Fire Chief;
Tiffany Leasure, Paralegal for City of Omaha

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1 CITY EXHIBITS
2 EXHIBIT DESCRIPTION
3
4 1 8/16/21 Memorandum and Order Denying
5 Plaintiff's Motion for Injunction by
6 Senior District Judge Richard G.
7 Kopf, United States District Court
8 for the District of Nebraska,
9 8/15/21
10 2 Declaration of Fire Chief David
11 Engler
12
13 3 Declaration of BC Michael Smith
14
15 4 Declaration of Captain Mahler
16
17 5 Declaration of FAO Matt Roberts
18
19 6 Declaration of FF Morgan Hurley
20
21 7 Declaration of FF Jason Love
22
23 8 Declaration of FF Stephen Dyer
24
25 9 Declaration of FF Trent Borchers
26
27 10 Statement of Curt Faust
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29 11 8/19/21 Investigation Report into
30 4/26/21 Fire Incident by Attorney
31 Torrey Gerdes, Baylor Evnen Law Firm
32
33 12 Audio of Fire Department Radio
34 Recording of 4/26/21 Warehouse Fire
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36 13 Transcript of Fire Department Radio
37 Recording of 4/26/21 Warehouse Fire
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39 14 Declaration of Aishah Witte,
40 Authenticating Audio Transcript
41 Benson's 5/5/21 Complaint Regarding
42 the 4/26/21 Warehouse Fire
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1 CITY EXHIBITS, CONT'D
2 EXHIBIT DESCRIPTION
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4 17 LFR Prime Report of Warehouse Fire
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6 18 Benson's 6/9/21 Grievance
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8 19 Benson's 6/11/21 Affidavit
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10 20 Benson's 8/9/21 Affidavit
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12 21 Media Articles
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14 22 Benson's Interview Audio 7/14/21
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16 23 8 of '21 Grievance Hearing RE:
17 June 9, 21 Grievance
18 24 9/24/21 Denial of 6/9/21 Grievance
19 Letter to Benson
20
21 25 9/27/21 Pre-Disciplinary Meeting
22 Notice Letter to Benson
23 26 Audio of 10/12/21 Pre-Disciplinary
24 Meeting
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26 27 Transcript of 10/12/21 Meeting
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28 28 10/19/21 Termination Letter
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30 29 CBA, 8/20/20 to 8/31/21
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32 30 CBA, 8/19/21 to 8/30/23
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34 31 LFR Professional Code of
35 Ethics/Standard of Conduct Policy
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37 32 LFR FF Safety Policy
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39 33 LFR 2020 Annual Report
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41 34 Captain Mahler's Awards
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9 Disciplinary Action
10 40 Lincoln Municipal Code - Dismissal
11 and Grievance Procedure
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18 Investigator Gerdes
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2	EXHIBIT DESCRIPTION	2	EXHIBIT DESCRIPTION
3	100 CBA	3	
4	101 4/27/2011 Suspension Notice	4	121 E-mail from Kelly Brandon to Chris
5	102 11/4/2014 Memo of BC Pashalek	5	Connolly and Ms. Gerdes, 7/12/21
6	103 Dispositional Memorandum of Kimberly	6	122 E-mail from Engler to Mahler, 7/1/21
7	Taylor-Riley	7	123 Interview Audio Recording
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10	106 E-mail of BC Michael Smith, 4/7/21	10	126 Declaration of Michael Smith
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12	108 E-mail of Benson to Witte, 4/18/21	12	128 Declaration of Morgan Hurley
13	109 Transcript of Radio Traffic	13	129 Declaration of Trent Borchers
14	110 LFR Incident Report, 4/26/21	14	130 Declaration of Stephen Dyers
15	111 E-mail from Benson to Faust & Witte, 5/5/21	15	131 Declaration of Jason Love
16	112 E-mail from Benson to Witte, 5/13/21	16	132 Declaration of Shawn Mahler
17	113 Witte Investigation Summary	17	133 Grievance Letter
18	114 E-mail to Benson from Witte, 5/25/21	18	134 Declaration of Edward Hadfield
19	115 Transcript of Audio File	19	135 Enhanced Fireground Safety, Effective Use of Division & Group Supervisors
20	116 E-mail from Smith to Witte, 5/26/21	20	136 Transcript of Grievance Hearing, 8/20/21
21	117 Investigation Summary	21	137 Letter of Chief Engler Denying Grievance, 9/24/21
22	118 Grievance, 6/9/21	22	138 Notice of Pre-disciplinary Action, 9/27/21
23	119 Benson Affidavit, 6/11/21	23	
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3	140 Termination Letter, 10/19/21	3	
4	141 Underlying Confidential Correspondence Regarding Comparative Discipline	4	* Union Exhibit 149 was offered and received on page 142
5	142 Disciplinary Action, 10/14/11 to 10/14/21	5	* Union Exhibit 150 was offered on page 143 and received on page 144
6	143 Performance Evaluations	6	
7	144 Deposition of Shawn Mahler, 5/9/22	7	* Union Exhibit 156, Telephone Log Activity, was marked on page 750
8	145 Awards and Recognitions	8	* City Exhibit 156, E-mail to Aishah from Mahler, was marked on page 1738
9	146 LFR Best Practices No. 2-Division/ Group Supervision	9	
10	147 Daisy Brayton Investigation	10	* City Exhibit 50 was marked on June 22nd, 2022, offered and received on page 571
11	148 Text Message exchange between Faust and Benson	11	
12	149 Arbitration Award, RE: Dan Duncan	12	
13	150 Arbitration Award, RE: Jon Reed	13	
14	151 E-mail from Corrigan to McDaniel, 11/3/21	14	*** **
15	152 E-mail, Benson to Witte, 4/22/21	15	
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20	156 E-mail from Mahler to Witte, 6/24/21	20	
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1 (On August 22, 2022, at 9:30
2 a.m., the proceedings continued as follows:)
3 THE ARBITRATOR: Are you ready to
4 go?
5 MS. GUTTAU: We are.
6 THE ARBITRATOR: All right. And
7 back on the record?
8 MS. GUTTAU: Yeah.
9 THE ARBITRATOR: Let's see.
10 Where were we? Doing cross?
11 MS. GUTTAU: We were going to do
12 cross. But John and I agreed we would go ahead
13 and do our case-in-chief. So we're calling
14 Captain Mahler.
15 THE ARBITRATOR: Okay. Go ahead.
16 MS. GUTTAU: Okay.
17
18 SHAWN MAHLER,
19 Having been sworn to tell the truth,
20 the whole truth and nothing but the
21 truth, testified as follows:
22 THE WITNESS: Yes, I do.
23 THE ARBITRATOR: Would you state
24 and spell your name for the record?
25 THE WITNESS: Shawn Mahler,
S-H-A-W-N, M-A-H-L-E-R.

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1 from the University of Nebraska. It was a
2 secondary teaching education degree. Went on to
3 get employed with Lincoln Fire and continued my
4 training with Lincoln Fire.
5 Q Okay. And you said that was in 1995
6 you joined Lincoln?
7 A Yes.
8 Q Okay. What was -- what position were
9 you hired into first?
10 A Originally, I was a firefighter
11 recruit and then passed the probationary process
12 and became a Lincoln firefighter.
13 Q Okay. And did you receive any
14 promotions since then?
15 A The only promotion that I've received
16 and have taken is the promotion to be a company
17 officer.
18 Q Is that a captain?
19 A Yes, captain.
20 Q Okay. What are -- what's the
21 responsibilities of a captain at LFR?
22 A Essentially, you're going to be in
23 charge of an apparatus, or in fire terms an
24 engine company or a truck company. And I'm a
25 captain of a truck company.

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1 THE ARBITRATOR: You may proceed.
2 MS. GUTTAU: Thank you.
3 DIRECT EXAMINATION
4 BY MS. GUTTAU:
5 Q Captain Mahler, how long have you been
6 a firefighter with Lincoln?
7 A I was hired April 4th, 1995.
8 Q And how long have you been a captain
9 with Lincoln Fire and Rescue?
10 A Since January of 2004.
11 Q Okay. Would you have -- would you
12 ever abandon anybody in a fire?
13 A No, I would not.
14 Q Have you spent your career saving
15 people from fires?
16 A Yes, I have.
17 Q Did you abandon Amanda Benson, Morgan
18 Hurley, and Matt Roberts in a dangerous
19 warehouse fire on April 26th, 2021?
20 A No, I did not.
21 Q I want to back up and talk a little
22 bit about your education and job history. Could
23 you tell the Arbitrator a little bit about your
24 education?
25 A Yeah. I received a bachelor's degree

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1 I've spent the majority of my career
2 on a truck company. I'm in charge of three
3 other personnel. Make sure that they are
4 trained and proficient in the duties and the
5 responsibilities that we carry out both for
6 emergent and nonemergent activities.
7 Q Okay. And just as kind of a refresher
8 since it's been a while since we've talked about
9 this case again. What's the different roles
10 between truck and engine at a fire scene?
11 A At a fire scene, engine companies
12 again are staffed, fully staffed with four
13 personnel. And their responsibilities are
14 essentially making sure water or a water source
15 is secured. And they're in charge of moving
16 hand lines and extinguishing the fire. Whereas,
17 as truck companies are in charge of rescue,
18 technical rescue, ventilation-type activities.
19 Q Okay. What other -- have you had some
20 -- any other roles in -- in regard to safety
21 during your time at Lincoln?
22 A Yes. In 2002, the responsibilities of
23 turnout gear, repair, and the management of that
24 budget was passed onto me by the department.
25 And I performed that role for eight-plus years.

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1 MS. GUTTAU: Yeah. Here's an
2 updated one too. I think this was the first two
3 pages that maybe didn't make it in that book.

4 THE WITNESS: Okay. Thank you.

5 Q (By Ms. Gutttau) Have you received
6 awards and recognition for your firefighting
7 services over the years?

8 A Yes, I have. I have received multiple
9 unit performance awards. I've received
10 firefighter of the month. I've received
11 firefighter of the year from local
12 organizations.

13 Q Okay. And is Exhibit 34 some of the
14 awards that you've received?

15 A Yes. This would be one of the most
16 current awards I received, and it appears that
17 this is the VFW Firefighter Award.

18 Q Okay. Tell me a little bit more about
19 the national award that you recently received.

20 A The -- the award that's Exhibit 34 is
21 awarded to me by the local chapter of the VFW.
22 And then -- I was unaware of it. They had
23 submitted my name throughout the State. And a
24 few months ago, I received a letter that I was
25 awarded the State VFW Firefighter of the Year

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1 with national recognition.

2 Q Thank you.

3 A Uh-huh.

4 Q Have you saved lives over the years as
5 a Lincoln firefighter?

6 A I have saved lives. I've removed
7 victims that went on to continue to have a
8 viable life. And it -- it's -- again, that's
9 one of the main responsibilities of truck
10 companies. And something that I take a
11 tremendous amount of pride and proficiency in.

12 Q Okay. You understand that the reason
13 we're here today is because Ms. Benson has
14 alleged that you abandoned her and Ms. --
15 Firefighter Hurley and FAO Roberts in a
16 dangerous burning warehouse; is that correct?

17 A That's correct.

18 Q Okay. Can you tell us about a time
19 where your conscientiousness about safety
20 actually saved her and her crew from harm?

21 A I believe it would have been in late
22 2018. It would have been perhaps the terminal
23 building fire.

24 Q Tell us what you did there that
25 specifically prevented Captain Ripley and

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1 Firefighter Benson at that time from harm?

2 A This particular incident originally
3 came in as a fire Alpha. It was quickly
4 upgraded by Captain Ripley as fire Charlie. As
5 the -- as that upgrade, that meant that Truck 8
6 was going to respond to this incident. Truck 8
7 responded. We set the aerial for rescue, and we
8 -- we did a corner set, meaning that this gave
9 us two options for rescues. The incident
10 commander asked that we go in on the main level,
11 establish lobby control, verify how many floors
12 or how many rooms were on the fire alarm panel.
13 So we had some internal activities, and that
14 involved also setting the positive pressure fan,
15 which is a large gas-powered fan that introduces
16 fresh air into the structure of the building.
17 And we usually typically on a high-rise fire we
18 create a charged or a positive pressure in the
19 escape stairway. So that was some of our
20 initial assignments.

21 But as a truck company officer and in
22 a high-rise, we're going to be dealing with
23 obviously having to navigate multiple floors.
24 And underneath my seat where I sit are the
25 elevator keys. Just as a -- a conscientious

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1 effort to know that if we're going to need
2 elevator keys, we certainly don't need them
3 underneath my seat.

4 So in grabbing my cache of equipment,
5 I obtained the elevator keys. As I was -- made
6 the lobby, there's two banks of elevators. I
7 took the elevator keys. They're in a red case.
8 I set them on the floor between the two elevator
9 doors and then went about my business of what
10 the incident command had asked me to do.

11 Q Okay. Did you later learn that those
12 elevator keys were important in assisting
13 Captain Ripley's crew?

14 A Yes. Later on in the fire event,
15 Truck 8 and my crew, we were up on the upper
16 floors. So we were multiple floors, seven or
17 eight floors above the lobby and away from the
18 keys. And Captain Ripley, I believe through a
19 course of events, called for a Mayday as smoke
20 was filling the elevator car that multiple
21 firefighters were in.

22 And once the Mayday was called, the
23 incident commander tasked other individuals to
24 help with the egress or the escape of the
25 firefighters that were in that. And they had

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1 inhalation severity could be. And so I had the
2 side door open on Medic 3 and was talking to
3 Captain Ripley. And then another individual
4 with LFR came over and created a gesture of
5 movement of inappropriate behavior of touching
6 Firefighter Benson.

7 Q Okay. And then did you talk with her
8 about that at some point?

9 A Yes. It was sometime later. I
10 believe the fire was -- was -- happened late on
11 a Monday. And then I went on vacation for the
12 next work set. So I was gone for about
13 twenty-nine days.

14 And just because I was, as a
15 supervisor and I was in such close proximity,
16 there was no way for me to deny that I didn't
17 witness this. And later on, I -- we were back
18 to work, and we were at another fire scene. And
19 I asked Ms. Benson if -- if she minded if I
20 asked her a few questions about that event that
21 had happened. And she agreed, and we had about
22 a, oh, forty-five second to a minute-and-a-half
23 conversation about it. And just asked her that
24 I was -- if there was anything that I could do
25 for her or if there was anything that she needed

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1 from me, depending on how that event was playing
2 out, that I would be more than happy to help her
3 in any way necessary.

4 Q Okay. What happened after that?

5 A That didn't go as planned. And that
6 within -- later that afternoon, my battalion
7 chief was out. He asked me to e-mail him the
8 events. And so I e-mailed the events and the
9 circumstances surrounding that conversation.

10 And eventually, I -- I don't know how
11 much time had passed. But -- but maybe days or
12 a week later, then-Chief Despain comes out, and
13 we have a private conversation, and he offers me
14 and let's me know there's going to be a letter
15 introduced into my file that is a no contact
16 letter. It's not disciplinary. It's just a way
17 for Firefighter Benson and I to maybe prevent
18 these conversations from being misconstrued or
19 uncomfortable for either one of us.

20 Q Okay. So you had a brief conversation
21 with her, and that then resulted in you getting
22 a no contact order imposed?

23 A That's correct.

24 Q Okay. So let's turn to R35.

25 MS. GUTTAU: This would be City

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1 35.

2 THE WITNESS: (Witness complies.)

3 Q (By Ms. Guttau) And is R35 the no
4 contact order?

5 A Yes. I recognized that as a letter
6 that was given to me that day.

7 Q Okay. That was then by then-Fire
8 Chief?

9 A Chief Despain, yes.

10 Q Okay. And the first sentence says,
11 effective immediately until rescinded. Has it
12 ever been rescinded?

13 A It has not. It's still in my file
14 currently.

15 Q Okay. You are to have no one-on-one
16 contact with Firefighter Amanda Benson except
17 under the following conditions: One, contact
18 must include the presence of her direct
19 supervisor or any chief officer. Two, orders
20 given to Firefighter Amanda Benson directly
21 related to and in the course of an emergency
22 situation.

23 And you understood that you must still
24 abide by that? That -- of up through the
25 warehouse fire and beyond?

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1 A Yeah. It was -- I'm well aware of the
2 letter, and I knew that it was still in my file,
3 and I was doing my best ability to abide by.

4 Q Okay. And at the time this was issued
5 in 2017, were you -- were you superior in rank
6 to her?

7 A Yes, I was. I was again promoted
8 captain, and Ms. Benson was a firefighter.

9 Q Okay. And you understood that under
10 this any contact must be in the presence of her
11 direct supervisor, chief officer, and must be
12 orders given to her directly related to and in
13 the course of an emergency situation; correct?

14 A Yes. It was very clear of what the
15 expectation was. And -- and in all honestly, it
16 actually helped me. It made me feel a little
17 more comfortable because there was some guidance
18 on -- on how -- because we're on the same shift,
19 we were going to run calls together.

20 So it -- it certainly would provide
21 and promote a better environment to not have any
22 awkward conversations perceived by either one of
23 us.

24 Q Okay. Did you always try to keep the
25 guidelines and orders in mind?

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1 A Oh, certainly.
 2 Q Okay.
 3 A I aimed to please and follow orders.
 4 Q Okay. And so by the time of the
 5 warehouse fire, you were then equal rank captain
 6 and acting- captain; is that correct?
 7 A Yes, that would be correct.
 8 Q Okay. So at that point you could only
 9 give her orders under certain circumstances;
 10 correct?
 11 A That would be correct. In very
 12 specific circumstances.
 13 Q Okay. For example, at the warehouse
 14 fire, you can't just give Ms. Benson orders just
 15 because you wanted to; right?
 16 A No. Because we would pull the same
 17 rank essentially. So it's peer to peer, and I
 18 would have no authority from captain to captain.
 19 We're equals. So there would be no authority
 20 for me to give orders to -- to another officer.
 21 Q Okay. And you could only get that
 22 authority if the incident commander gave you
 23 such authority; correct?
 24 A That would be correct, yes.
 25 Q Okay. Have there been situations

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1 that we were working with live loads, and we
 2 really set the tone while it's going to be
 3 valuable training that we have to, again, do so
 4 under certain parameters. So there would have
 5 been again that thirty to forty-five minutes of
 6 dialogue for anybody to share any nuances,
 7 questions what the training was going to
 8 contain. And there was no dialogue between
 9 myself, Ms. Benson, the captain of Truck 1, and
 10 we all headed out to the training event.
 11 There was two separate scenarios set
 12 up. They were identical scenarios, just about
 13 50 feet apart so that each truck company could
 14 perform these skills without having to kind of
 15 stand back and watch somebody else do it.
 16 So I was an instructor with the
 17 Truck 1 company, and the other two instructors
 18 were teaching the other company.
 19 And I was doing again a little bit of
 20 an introduction in what we were doing and
 21 setting up the tone for the training. And it
 22 got to be about the time that it was -- we were
 23 going to don our gear, and they were going to go
 24 start the extrication training.
 25 Firefighter Benson at the time again

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1 where Ms. Benson has -- has attempted to
 2 interact with you that has made it difficult to
 3 know when you can talk to her and when you
 4 can't?
 5 A There have been situations that have
 6 created challenges, yes.
 7 Q Can you explain one of those? For
 8 example, the extrication training?
 9 A Yes. Again, as I mentioned earlier
 10 that Lincoln Fire was taking a very aggressive
 11 approach to revitalizing some technical rescue.
 12 I had participated and coordinated some auto
 13 extrication for the department. And I was the
 14 lead instructor for that. And on one of the
 15 training days that I was going to be an
 16 instructor -- one of the three instructors, Ms.
 17 Benson and Truck 1 Apparatus was going to be at
 18 that training.
 19 Q Okay. And then what -- what
 20 interactions did you have with her at that
 21 point?
 22 A The morning started as all other
 23 sources had. We had about a 30- to 45-minute
 24 safety briefing. And it was an opportunity for
 25 everybody to kind of understand the parameters

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1 was a firefighter on Truck 1. There was an
 2 overtime captain that was in charge of Truck 1.
 3 And again, at the time that we're getting ready
 4 to start the training, Ms. Benson comes to me
 5 and says that because she's been riding out of
 6 grade or performing acting captain role, that
 7 instead of doing the skills, she wanted me to
 8 teach her and show her all of the rescue group
 9 supervisor skills and recognition of progressing
 10 through the incident. And again, that, there
 11 was no opportunity for me to know that that was
 12 coming.
 13 Again, we had -- the safety briefing
 14 would have been a good time for the captain of
 15 Truck 1 and Ms. Benson to come to me and say,
 16 hey, we're changing some roles. That would have
 17 given me a heads-up that the training was going
 18 to change a little bit.
 19 And the reason that's important to me
 20 is because when Ms. Benson approaches me, now
 21 it's putting me in a very difficult situation
 22 because I'm not supposed to talk to her
 23 one-on-one.
 24 Had everything stayed in play, I would
 25 have communicated with the overtime captain and

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1 that individual would have relayed any of those
2 directions or training skills would have been
3 disseminated down to Ms. Benson and the rest of
4 the crew, and that would have allowed me to stay
5 within the parameters of the no contact order.

6 Q Okay. That kind of puts you between a
7 rock and hard place knowing what to do?

8 A Yeah. It was -- it was very
9 difficult. Because in order for Ms. Benson and
10 I to have proper communication, there -- when
11 we're doing extrication training that means the
12 general public knows that -- knows it as the
13 jaws of life.

14 Q Uh-huh.

15 A We refer to it as the Holmatra
16 equipment, which is just a name brand, but
17 there's a gas motor, essentially like a lawn
18 mower that's running, and it powers a hydraulic
19 pump that makes the tools operate.

20 So in order for Ms. Benson and I to
21 have effective communication, we would have to
22 step back 5 to 10 feet away from the training
23 area. We would have some dialogue, and then we
24 would step back up, and then she would coach
25 that crew on what things to do.

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1 What made me feel uneasy about that is
2 that at this point now we're having
3 communications, and there's no witness and
4 violating the contact order. And the reason
5 that I chose to go down that path. One, my
6 passion for education and training in that I
7 tried to rise above maybe some of the things
8 that have happened over the years, and my goal
9 is to teach and train people.

10 Secondly, yes, I was in a no-win
11 situation. Because if I talk, then I violate
12 the order. If I don't talk, now I'm accused of
13 not talking or not training Ms. Benson.

14 Q Uh-huh. At the time this happened in
15 2021, the lawsuit was still pending; correct?

16 A Yes, that's correct.

17 Q And in that same lawsuit, she had
18 asserted claims against you alleging
19 discrimination when you didn't talk to her and
20 sometimes when you did talk to her; correct?

21 A That's accurate.

22 Q Okay. Let's move ahead then to April
23 of 2021. Do you recall attending a ladder
24 training on April 22nd, 2021, with your crew and
25 system other -- other firefighters?

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1 A Yes. The training -- I remember the
2 training. It was conducted at Southeast
3 Community College Training Center.

4 Q Okay. What was that training?

5 A It was referred to as micro ladder
6 training. It was supposed to be a fifteen-,
7 twenty-minute event. But -- LFR-sponsored
8 training. It was organized by LFR's training
9 division.

10 Q Okay. Was Benson at the training with
11 you?

12 A No, she wasn't.

13 Q Okay. After the training, did -- did
14 Chief Smith ask you some questions about it?

15 A Chief Smith did come -- have a
16 conversations with me. And that was once we had
17 returned to the fire station or the -- we were
18 back in quarters. It was approximately ninety
19 minutes after we had been at the training, Chief
20 Smith was at the station, yes.

21 Q Okay. What did he ask you?

22 A He -- he asked me -- he repeated a
23 couple of conversations or statements that I had
24 supposedly made while I was at the training.
25 And he asked me, did you say these things? And

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1 I'm, like, no, that's not anything I would have
2 said.

3 Q Okay. And did you even know at the
4 time that Benson had made a complaint that
5 triggered Chief Smith to ask you those
6 questions?

7 A I would have no knowledge of why he
8 was coming out there to ask me that. And if he
9 asked me a few questions, I said no. And it was
10 a brief interaction between us.

11 Q And she wasn't even at the ladder
12 training at -- anyway; right?

13 A No.

14 Q Okay.

15 A No.

16 Q Did you later learn that it was Ms.
17 Benson who had made a complaint that you were
18 talking or defaming her at the ladder training?

19 A It would have been a follow-up perhaps
20 a week later. I think as Chief Smith and Aishah
21 were looking into it. They came to the station,
22 and we talked about it.

23 Again, some similar questions. And --
24 and that was where it just seemed like it was
25 odd that I was being asked again that if I made

Page 1585

1 these statements, and I didn't.

2 Q Okay. And was that after the
3 warehouse fire that they came back out to talk
4 to you about it?

5 A Yeah. I believe so.

6 Q Okay. Did you later learn that the
7 other firefighters at the ladder training
8 confirmed that they had not heard you say what
9 she's accusing you of?

10 A Yes, I did learn that everybody that
11 attended the training collaborated the story
12 that there was no comments like that made.

13 Q Okay. Even if you had known that she
14 made the complaint or had made an assumption, by
15 this time you had been embroiled in litigation
16 with her since 2018; correct?

17 A Yeah. It -- there was -- I was
18 involved in it, and I wasn't getting out of it.
19 So --

20 Q And that lawsuit had been reported at
21 various times in the news; correct?

22 A That's correct.

23 Q You had worked at various fires with
24 her during that time period without incident;
25 correct?

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1 A Correct.

2 Q So there's -- was there any reason
3 that even an allegation about a false rumor that
4 you talked to a friend about her that would make
5 you want to suddenly endanger her life?

6 A No. It would give me no cause to do
7 anything of that nature.

8 Q Okay. Let's move ahead now four days
9 to the April 26th warehouse fire.

10 What were -- what was your position that
11 day? What was your role?

12 A Again, I was the company officer on
13 Truck 8 and was staffed with my full crew, and
14 we were in quarters.

15 Q Okay. And when you say
16 company-officer, captain; correct?

17 A Captain, yes.

18 Q Okay. And who was your crew that day?

19 A My driver was Jason Love, Firefighter
20 Steven Dyer, and Firefighter Trent Borchers.

21 Q Okay. Do you recall about what time
22 of day you were called to the fire?

23 A I would say it was mid-morning that we
24 were called.

25 Q Okay. Tell me about your crew members

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1 and their skill level. Love, let's start with
2 Love. Tell me about what is -- is he a good
3 firefighter?

4 A He is a very good firefighter. He
5 also has truck experience. He would have spent
6 several years on another shift at Truck 1. And
7 he is my driver.

8 So over the past, oh, previous --
9 about six months previous to him coming to me,
10 he had got promoted to driver, and he kind of
11 wanted to get back to truck work. So then he
12 transferred to Truck 8 to be my driver on Truck
13 8.

14 Q Okay. And then tell me about Dyer's
15 role and how he is as a firefighter.

16 A Again, Firefighter Dyer is coming from
17 Station 1, a very busy station as well. Highly
18 skilled. Very talented and has a really good,
19 solid work ethic and wants to do things the
20 right way.

21 Q How about Firefighter Borchers?

22 A Ditto on Firefighter Borchers. Again,
23 he was on C shift. He had spent approximately
24 the last eleven years on Truck 1. And something
25 that he always wanted to do was come work for

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1 me. And there was an opening due to one of my
2 firefighters getting promoted to driver. So he
3 transferred to Truck 8.

4 And my crew are tremendously
5 proficient. They're very talented. And that's
6 not -- I don't deserve all the credit for that.
7 They are dedicated firefighters.

8 When they transfer to be on my
9 apparatus, I have a very simple expectation.
10 And that is: I don't ever want to look stupid.

11 And when -- when they hear me say
12 that, that means that they are going to adopt
13 that same mentality. And that when you fall in
14 line and I say, I don't want my company officer
15 or my captain to look stupid, that means that
16 you are going to be talented. You're going to
17 train. You're going to be proficient.

18 So it speaks highly of their work
19 ethics and their desire to not only be a member
20 of a good crew, but it speaks highly of their
21 desire to do what's right for the department and
22 the City.

23 Q You said one of them had wanted to --
24 always wanted to come to your crew. Have you
25 heard of others that have wanted to work with

Page 1589

1 you?

2 A Yes. There's many, both male and

3 female firefighters, that have told me

4 personally -- they've communicated to battalion

5 chiefs. I know there are battalion chiefs that

6 say, hey, if you want to learn, this is the

7 place to go. You're going to be busy. You're

8 going to train. But if you want to be

9 proficient in your career and your talent and

10 raise your talent level, this is the place to

11 go.

12 I appreciate the accolades. I just do

13 what I do. And everything else kind of falls in

14 line after that.

15 Q Okay. As -- if you were doing -- do

16 you believe your crew on that day are honest

17 individuals?

18 A Oh, yes. Definitely.

19 Q If you were doing anything unsafe,

20 would your crew call you out on it?

21 MR. CORRIGAN: Objection.

22 MS. GUTTAU: I'll restate it.

23 Q (By Ms. Gutttau) In your experience

24 with your crew, if -- if you were doing anything

25 unsafe, do you believe they would call you out

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1 individual can look at the staffing roster, and

2 you can see where everybody is situated within

3 the department.

4 I knew that just by looking at the

5 training calendar that particular morning that

6 Truck 1 had some captain-initiated training. So

7 just looking at the roster, I knew what the

8 staffing was of that particular apparatus.

9 Q You knew she was the acting captain

10 that day for Truck 1?

11 A Yes, I do.

12 Q Okay. Do you know who was on her crew

13 that day?

14 A The FAO, the fire apparatus operator,

15 was Matt Roberts. And I believe that Morgan

16 Hurley was also on the apparatus, and she was a

17 trainee or a recruit firefighter at the time.

18 Q Okay. And we've heard previously from

19 Firefighter Roberts, is he an experienced

20 firefighter?

21 A Yes, he is. He spent time as a

22 firefighter on Truck 1. Got promoted to driver

23 and was back on Truck 1.

24 Q Okay. And do you believe he's a good

25 firefighter?

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1 and bring it to your attention?

2 A I feel comfortable in agreeing with

3 that. Again, through conversations. Even as I

4 stated earlier whether -- whether they're

5 comfortable or not, they have the right to

6 question something on safety.

7 I promote within my crew in the work

8 that we do and that we are a team. I don't have

9 all the answers. I may have certain talents.

10 But each one of those individuals have

11 specialized talents, and I rely on that

12 diversity to really make Truck 8 the company

13 that it is.

14 Q And was Ms. Benson's crew also called

15 out to the warehouse fire?

16 A Yes. Truck 1 was present at the

17 scene.

18 Q Okay. And they were -- actually

19 arrived before you; correct?

20 A Yes. Many -- several minutes prior to

21 our arrival.

22 Q Okay. What was your understanding of

23 her role at the time for Truck 1?

24 A Each morning, there's a morning

25 briefing. We can check -- if you want, each

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1 A Most definitely.

2 Q Okay. As acting captain, was Benson

3 responsible for her own crew's safety?

4 A Yes.

5 Q As captain for Truck 8, are you

6 responsible for your crew's safety?

7 A Yes.

8 Q Okay. When you get called to the

9 fire, tell me what happens when you first

10 arrive.

11 A The -- the situation of getting on

12 location was just a little bit -- when I say not

13 normal. While it was a fire Charlie, I believe

14 originally Truck 1 was out of service for the

15 training. And -- and the reason that Truck 8 is

16 now dispatched to the location of this fire,

17 which is diagonally across town was due to

18 Truck 1 being out of service.

19 So essentially what it ended up

20 happening was there was three truck companies

21 that arrived on location at the warehouse fire.

22 And I believe that Truck 8 just by the

23 geographic location we were the last suppression

24 unit to arrive on the first original dispatch.

25 Q When you say "suppression" unit, what

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1 A (Witness complies.)
 2 Q And it's an aerial view; correct?
 3 A That's correct.
 4 Q Okay. So when you arrive at the fire,
 5 can you tell me where you arrive, what area?
 6 A We are essentially -- the crews were
 7 directing us to not pull into the A side, and it
 8 didn't look advisable anyway because of the
 9 congestion. So essentially Truck 8 stayed where
 10 we see it says Doris Bair Circle.
 11 Q Uh-huh.
 12 A The front of the apparatus would have
 13 been just behind the "D" of Doris.
 14 Q Do you know where Truck 1, Ms.
 15 Benson's truck was at that time?
 16 A I don't know their specific location.
 17 But I know that it was near the A side of the
 18 structure.
 19 Q Okay. So what's your mindset when you
 20 arrive as far as what -- what are you going to
 21 do next?
 22 A Again, it was -- this -- the response
 23 was very long. It took us in excess of twelve
 24 minutes to get on location. Other units were
 25 arriving essentially in four minutes. We had

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1 provided me direction of where it was probably
 2 located. And that when it came to the
 3 electrical side, he gave a description of an
 4 individual that was going to come over to assist
 5 us to help us identify the electrical utilities.
 6 Q Okay. And there's a part where the
 7 first crew on the scene only calls for a
 8 watering can. What is that? What's a watering
 9 can, what's that mean?
 10 A A water can is -- is -- essentially,
 11 looks like a fire extinguisher. It's 2 -- it
 12 contains 2-1/2 gallons of pressured water with a
 13 little bit of a foam additive to it. But,
 14 again, it's 2-1/2 gallons of water.
 15 Q Okay. What does that convey to you
 16 about the fire?
 17 A That whatever the size-up of the
 18 approach of the first arriving units, that if
 19 we're going to attempt to extinguish a fire with
 20 a water can that is relatively small.
 21 Q Okay. Once you complete utility
 22 control, then what's your next job? How is that
 23 determined?
 24 A Utility control for me involved
 25 obviously shutting off the gas meter, and that

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1 interior activities happening at six and seven
 2 minutes.
 3 So we're still en route for five-plus
 4 minutes while there's actually interior
 5 activities.
 6 This particular address is in Station
 7 5's area. So because of the eight years that I
 8 spent at Fire Station 5, I'm familiar with this
 9 particular area. It's more of an industrial
 10 area. So I knew that we were going to be
 11 responding to a big building.
 12 Q Uh-huh. Okay. And what is your
 13 assignment, or how do you know what to do when
 14 you first arrive?
 15 A So the assignment from the
 16 acting-Captain Faust was utility control. And
 17 for the most part, utility control means that we
 18 are going to locate the gas meter and the
 19 electrical supplies that -- that essentially
 20 that would stop or control the branch circuits
 21 from the electrical panel.
 22 Q And did you -- did you indeed do that?
 23 A Yes. And -- and honestly, by -- I
 24 think some of the staff that was on scene, they
 25 were in communication with Chief Faust. And he

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1 was in close proximity. So it didn't take much
 2 time.
 3 But in order to control the electrical
 4 utilities, we had to navigate down the Charlie
 5 side about 200 feet. And, again, Chief Smith
 6 was tracking with us. I'm receiving questions
 7 from, I think, interior crews or from Faust of
 8 what -- what do I see on the Charlie side. And
 9 I give a brief report of the smoke conditions.
 10 And then it becomes apparent if we're going to
 11 go in and secure the electrical utilities, that
 12 we're going to have to go on air and don our
 13 face pieces and perform the utility control in
 14 an environment that is going to be obscured by
 15 the smoke.
 16 Q Okay. And at this time, did you have
 17 an understanding of what Truck 1, Benson's crew,
 18 was doing or assigned to?
 19 A That assignment was made while we were
 20 en route. So, essentially, while we're en
 21 route, we have the luxury of hearing all of the
 22 radio traffic and where we can focus on it
 23 instead of trying to work and hear radio
 24 traffic.
 25 So Truck 1's assignment was to -- fire

Page 1601

1 extension was the assignment for Truck 1.
 2 Q What's fire extension?
 3 A Fire extension is -- predominantly I
 4 would say is -- is an activity that's handed off
 5 to truck companies. Again, we have engine
 6 companies that are deploying hand lines, hose
 7 lines of various sizes. And that fire
 8 extension -- essentially what is happening at
 9 this particular time in the incident because it
 10 was determined by both the first-arriving unit
 11 and by the people that worked there that
 12 everybody was out of the building and that
 13 search was not necessary.
 14 So the fire extension assignment
 15 essentially puts you in close proximity to fire
 16 attack. You're trying to establish how big is
 17 the fire, what's the involvement of the fire.
 18 And that becomes a very easy question. Do I
 19 have a room on fire, or do I have a building on
 20 fire? This essentially was a room on fire or an
 21 object on fire. And you're just trying to
 22 establish what is the -- how big is it. And
 23 fire extension means that you might be, if it's
 24 in a residential structure, you might be opening
 25 walls, maybe pulling ceiling to allow the engine

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1 malfunction or the incident commander -- there's
 2 some other -- a building collapsed or something,
 3 something imperative that is going to happen.
 4 But really you're -- fire extension, you're
 5 essentially in the building until you -- either
 6 -- the fire is extinguished or you get low on
 7 air. And then -- then you come out.
 8 So it's -- that's that activity. And
 9 part of that activity is relaying information to
 10 the incident commander. You're essentially like
 11 a forward set of eyes to the incident commander.
 12 You're reporting what you're finding. Is the
 13 fire big. Is it small. Are the -- do you have
 14 access to it, or is the hose line making
 15 progress. So, again, it's a very critical role
 16 to -- to stay with that assignment and perform
 17 that assignment with proficiency.
 18 Q So if you're on extension, should you
 19 get frequent updates to the incident commander?
 20 A Yeah. I think that you're not going
 21 to be radio traffic, you know, every one of your
 22 events. But you're going to be providing
 23 updates that as a company officer that you think
 24 are important or, you know, critical to the
 25 incident because that's essentially confirming

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1 company access to the seat of the fire or the
 2 origin of the fire.
 3 And to be honest with you,
 4 firefighters that's -- that's their goal. They
 5 either want to be on the nozzle or they want to
 6 be inside. I mean, that's what you talk about
 7 for the rest of the day is being inside.
 8 Utility control, there's not a lot of excitement
 9 in that.
 10 Q And fire extension -- well, first of
 11 all, were there sprinklers also in this
 12 warehouse that were going off at times?
 13 A Yes. It was sprinkled and they were
 14 activated in areas above the fire.
 15 Q Okay. And so fire extension at this
 16 fire, what did that -- what was your
 17 understanding that Benson's crew or Truck 1 then
 18 would be doing, or had that ended at some point?
 19 What did you understand was her role?
 20 A No. There's -- fire extension is very
 21 important to the scene and to the success of the
 22 scene. That once you're assigned inside the
 23 structure, there's -- there might be a few
 24 parameters for the reason to leave. You maybe
 25 found a victim. Maybe you had an air

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1 the action plan -- we're doing an interior
 2 attack. It's an offensive attack. By what
 3 you're relaying back to the incident commander,
 4 that starts to make sense. Hey, that's the plan
 5 I put in place. That sounds like it's working.
 6 If the fire extension or fire attack
 7 is saying the fire is getting bigger, we're not
 8 making a difference, that gives them a clue I
 9 need to change my strategy.
 10 Q Was Ms. Benson when she was on fire
 11 extension giving updates to -- frequent updates
 12 to Chief Faust?
 13 A Not that I'm aware of. But, again,
 14 upon review of the audio, it became clear that
 15 there were no updates to Chief Faust.
 16 Q Okay. Did Chief Faust have to reach
 17 out to her for status update?
 18 A Yes. Again, after reviewing the
 19 audio, Chief Faust -- I refer to it as pings
 20 Truck 1 to make sure that they're okay and the
 21 conditions are tenable inside the structure.
 22 Q There's a portion of the fire
 23 transcript, and we can go through it in more
 24 detail in a bit, but where the incident
 25 commander says, Truck 8 assist Truck 12. Did

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1 that make Truck 12 the group supervisor over
2 you?

3 A That might be in error because Truck
4 12 wasn't there.

5 Q I probably got the wrong number. Let
6 me look here.

7 A I'm going to make the assumption it
8 was Truck 1.

9 Q Truck 1. Sorry. Yeah.

10 A So the three trucks that were there
11 were Trucks 1, 8, and 5.

12 Q Was there a time you were told to
13 assist anybody?

14 A No.

15 Q Okay.

16 A No.

17 Q Okay. I may have misread that part.
18 So I'm back before you're getting to. So
19 probably out of order here.

20 When you arrived, did you -- when you
21 first arrived, did you think you would be
22 helping Truck 5?

23 A When I first arrived, my assignment
24 was utility control.

25 Q Okay.

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1 current assignment to Truck 8, that has been
2 completed. We're ready to be reassigned.

3 Q Okay. So jumping, I think, ahead to
4 what you're talking about, was there a time
5 where Benson volunteered her crew to assist with
6 ventilation and the incident command instructed
7 them to assist with in opening an overhead door?
8 As you read the transcript, did you see that at
9 some point?

10 A Yes. At some point that became clear
11 that that radio traffic supported that.

12 Q Okay. At the time at the fire, did
13 you hear that?

14 A No, I -- I did not.

15 Q Okay. And is it -- it wouldn't be --
16 Benson and -- Captain Benson and Captain Wright
17 also both testified they did not hear everything
18 on radio transmission. Fair to say that not
19 everybody hears everything on the radio?

20 A That is a fair assessment. There's a
21 number of variables that would prevent people
22 from hearing all of the radio transmissions.

23 Again, I think in this first hour,
24 there's roughly 200 radio transmissions. And it
25 -- again, when I'm performing utility control,

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1 A And I'm -- I'm going to complete that
2 assignment unless I come up against some
3 variables, whether it's a fence or something
4 that prevents me from completing that
5 assignment. Perhaps the gas meter is inside the
6 structure. So I'm not going to be able to shut
7 the gas off. I would be communicating that to
8 Chief Faust saying hey, we've walked the
9 perimeter of the building. We have no gas
10 meter. So obviously it's going to be interior,
11 and that's going to be done at a later time.

12 And the reason that's important is
13 because he will announce that over the radio and
14 that crews will know that while we made an
15 effort to secure the utility, whether it's gas
16 and/or electric, that if we didn't shut the gas
17 off, just to be aware of that. That's still
18 activity in the building.

19 So my focus was to complete that
20 assignment. And when that happens, my typical
21 behavior is that once I've been given an
22 assignment if -- if there's no challenges to it,
23 I'll complete that assignment. Once the
24 assignment has been completed, I'll radio to
25 command that these activities have been -- your

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1 the incident commander knows what I'm doing.
2 He's not expecting to hear from me unless I have
3 any challenges. And I'm focused on what we're
4 doing. I'm focused on directing the crew.
5 Making sure that we are doing that in a safe
6 way. We're being proficient. So there's an
7 opportunity to miss radio traffic.

8 I would compare it to when you're at a
9 party or a gathering and there's multiple
10 conversations going on. But until somebody says
11 your name, you're like, oh, I perk up. Like,
12 hey, what do you want? So I'm listening to the
13 radio. I hear the traffic.

14 But unless I hear somebody say and
15 command to Truck 8 or Truck 8, I'm just letting
16 those kind of go in the background. I'm aware
17 of them, but they're pertaining to somebody else
18 and their activities.

19 Q Okay. And so you didn't know what
20 incident command had told to -- that they had --

21 MS. GUTTAU: Strike that.

22 Q (By Ms. Gutttau) You did not know that
23 incident command had told T1 to assist T8 with
24 ventilation?

25 A No, I did not catch that radio

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1 traffic.

2 Q What would you have been doing around
3 that time period, just physically doing or
4 jobwise?

5 A At that particular point in time --
6 myself, Dyer, and Borchers -- are on Charlie
7 side. We're essentially inside of the building
8 in a room that is maybe 10 by 14. And it is
9 where the service -- electrical service entrance
10 is coming in. And so I would estimate there
11 could have been six, maybe eight electrical
12 panels, and we're trying to determine which one
13 is going to shut off the electrical power to
14 that portion of the building but not affect
15 other portions of the commercial building.

16 Q Okay. And did you ever hear incident
17 command make you her -- Benson's group
18 supervisor?

19 A No.

20 Q Okay.

21 A Never heard that.

22 Q Did you ever hear incident command
23 make you T1 or Benson's supervisor in any way at
24 the warehouse fire?

25 A No. That radio traffic never

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1 happened.

2 Q Okay. Her -- Ms. Benson's expert,
3 Mr. Hadfield, testified that the first person
4 assigned ventilation always then supervises
5 everyone after that who is assigned to assist.
6 Is that how it has worked or works now at LFR?

7 A It's never worked that way. It's --
8 it's never implied. It's not part of -- like we
9 talked earlier, about NIMS. That does not meet
10 the NIMS or the ICS structure. And there's one
11 and one person only that creates the structure,
12 and that's the incident commander.

13 Q So even if you had heard she was
14 assigned to assist T8 with ventilation, opening
15 an overhead door, would that make you her
16 supervisor in any way in a manner that would
17 allow you to give her orders?

18 A No. We -- at best, we're working in
19 peer capacity to one another.

20 Q Okay. And the only one that could
21 give her orders would be incident command; is
22 that correct?

23 A That's correct.

24 Q Okay. At any time at the warehouse
25 fire, did you have authority to give Ms. Benson

Page 1611

1 orders?

2 A No. We're equals at that point.

3 Q Okay. And under your no contact
4 order, you're not to communicate with her unless
5 a superior is present and you're giving -- or
6 you're giving orders; correct?

7 A Correct.

8 Q Okay. You didn't have authority to do
9 that?

10 A No. It was essentially perhaps
11 undermined --

12 Q Okay.

13 A -- the strategic plan for the incident
14 commander.

15 Q How so?

16 A If -- if I was to give a direction or
17 an assignment to another company in person, even
18 over the radio, one, I don't have any authority
19 to -- to do that. Secondly, if it's in person,
20 it creates a lot of challenges. It creates
21 challenges for the safety officer. It creates
22 challenges for the RIT team. The RIT team is a
23 group of individuals that are put in place for
24 the safety of the firefighters. So if somebody
25 goes missing or a Mayday is called, the RIT team

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1 is essentially deployed first. And essentially
2 and most importantly to give an order or an
3 assignment off radio the incident commander is
4 completely unaware of that.

5 And finally, I may not know what I'm
6 talking about. I could give somebody an
7 assignment that is completely in error and put
8 them at risk. So that's why the incident
9 command structure exists is that you have one
10 person in charge making assignments.

11 Q When you're inside the warehouse with
12 her -- and we'll get to that in a little more
13 detail -- there's no -- the incident commander
14 isn't present inside the warehouse fire with
15 you, is he?

16 A No. They're out in the command
17 vehicle.

18 Q So if you're equals at the fire, you
19 can only give her orders if you're designated as
20 a group supervisor over her; correct?

21 A Under the parameters of incident
22 command, yes.

23 Q Okay. And other than that, no contact
24 under your no contact order; correct?

25 A Correct.

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1 Q Okay. So, again, at a scene like
2 this, if she had approached you on the outside
3 of the warehouse fire does that put you in
4 between a rock and a hard place again?

5 A Yes. And -- and that did occur.

6 Q Okay. Tell me about that. So I want
7 to talk about that. Where did you first
8 encounter Ms. Benson at the warehouse fire if we
9 look at Exhibit 16, the aerial view?

10 A I assume everybody has the same red
11 letter "B" on their paper.

12 Q Correct.

13 A It would be directly below that, and
14 you can see there's a grass median. And we
15 would have met at kind of right just shy of the
16 radius of the grass median below the "B."

17 Q Okay. And, again, at the time you
18 met, you have not heard that she had been asked
19 to assist you or been told to assist with
20 ventilation, opening an overhead door?

21 A No. We had completed -- Truck 8, we
22 had completed -- we're in the process of
23 completing our electrical control.

24 And command was asking us -- multiple
25 units interior were asking for ventilation. And

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1 Chief Faust was asking me to perform ventilation
2 activities. I reported to him that we had not
3 completed our assignment yet. That we were
4 still actively engaged in that, and that any
5 ventilation that we would have to offer would be
6 delayed because we had not completed that.

7 Within a few moments, we were able to
8 complete that, exit it, had a brief conversation
9 with Chief Smith. And then he said, hey, Faust
10 is asking you guys to come over and open an
11 overhead door. And that's what Faust radio
12 traffic was asking us to come to the Alpha side
13 essentially and open an overhead door.

14 Q So you're coming around from C to B
15 heading towards A to open an overhead door, and
16 you encounter Benson at the -- kind of at the
17 corner, you said?

18 A Uh-huh.

19 Q What happened at that corner?

20 A We were -- we had -- we had left that.
21 We had gone back to Truck 8. Because we were
22 asked to essentially open an overhead door, that
23 was going to require a different cache of
24 equipment for us.

25 So all four of Truck 8's crew was back

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1 at Truck 8 for a few moments. We gathered that
2 cache of equipment, and then all four of us were
3 headed to this location. And we -- obviously,
4 it's a fire. We're hustling. We're not
5 walking. It's kind of a quick walk or a jog,
6 carrying equipment. And as we kind of approach
7 that corner, that is when the Truck 1 crew --
8 let me stop for a second.

9 Because that we were completing
10 our electrical assignment, utility control, we
11 were on face pieces. And we were breathing air
12 from our SCBAs. As a way to minimize the
13 delays, we kept our face pieces on, but we were
14 not breathing the air from the SCBAs.

15 So when we come around that
16 corner, we're in our face pieces, and Truck 1
17 essentially is in their face pieces. And we're
18 going to the A side, and Truck 1's crew is going
19 the opposite direction we are, which kind of
20 like shocked me, because their assignment was
21 fire extension. I was surprised to see them on
22 the exterior of the building.

23 Q Let me interrupt you. Because you had
24 not heard any other assignment at that point
25 given to them?

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1 A No. I'm operating under the pretense
2 they're still inside the fire on their original
3 assignment.

4 Q Okay. So they encounter you. Sorry
5 to interrupt.

6 A That's okay.

7 Q Continue what happened.

8 A Acting-Captain Benson says something
9 to the effect of "what would you like us to do"?
10 And, of course, I'm thinking to myself, well, I
11 don't know what you guys are doing, because
12 we're going in opposite directions. We can't be
13 doing the same thing if we're going in opposite
14 directions.

15 I replied back that we're going over
16 to open an overhead door. If you need an
17 assignment, you need to call command.

18 Q Uh-huh.

19 A For all the reasons that I just stated
20 a few moments ago, so that it's on the radio and
21 documented and -- and everybody knows what
22 everybody is doing.

23 Q Okay. And then what did you do?

24 A We attempted to continue to move
25 towards -- again, at this point, I have not seen

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1 the A side. If we look at, again, the photo --
2 I think this is 16 again. And the semi tractor
3 trailer that's parked is -- is very close, the
4 same way that it was positioned the day of the
5 fire.

6 So when I glanced to essentially my
7 left, like, I want to see the A side, I want to
8 start my size-up process. I can't see any of
9 the doors. All I see is this semitrailer.

10 So I'm wanting to get to the A side,
11 one, to see which door I'm opening and what's
12 the conditions, what's going on, I want to lay
13 some eyes on the A side.

14 Q So if you haven't seen it, you
15 wouldn't know what to tell anybody to do over
16 there anyway?

17 A No. I need to do my size-up.

18 Q Okay. Is that typical to have to do a
19 size-up at a fire scene when you're trying to
20 figure out what to do?

21 A Yeah. You better have a plan before
22 you put a bad plan in action.

23 Q Okay. There's been testimony -- and
24 I'm sure you'll be asked -- that the first time
25 you reported that you told Ms. Benson outside

Page 1618

1 the warehouse that, you know, hey, if you need
2 something to do to contact incident command, the
3 first time that was reported in writing was in
4 Ms. Gerdes' investigation. Are you aware of
5 that?

6 A Yes.

7 Q When was the first time you were asked
8 to go in detail what happened at the warehouse
9 fire?

10 A It would have been during Ms. Gerdes'
11 investigation -- or I guess my testimony with --
12 with her.

13 Q Okay. So even if her question to you
14 at that corner, as you're heading in different
15 directions about what to do indicated to you
16 that she thought maybe her crew was to be
17 helping you. You still hadn't heard any order
18 to that effect at this point; correct?

19 A That's correct. I have not.

20 Q You have -- you're not her group
21 supervisor?

22 A I have not been designated that.

23 Q And you never were?

24 A Never were.

25 Q And you can't give her orders, can

Page 1619

1 you?

2 A I cannot.

3 Q Okay. And her assumptions don't make
4 you a group supervisor, do they?

5 A No, they do not.

6 Q So then what happens once you get
7 around to the A side? What do you do?

8 A Again, listening to the radio traffic
9 coming in, approach reports. You know, Truck 5
10 is reporting that they have two large overhead
11 doors open. Again, I don't know what size of
12 door that we're going to be opening when we're
13 going over there. But once I come around the
14 corner, really the only door that is left to be
15 open is I refer to as a small commercial door.
16 It's essentially the size of a semi tractor
17 trailer, kind of the back end on a loading dock.
18 So, I mean, essentially we're probably dealing
19 with a door that might be 9 or 10 feet wide and
20 perhaps 10, 12 feet tall.

21 Q Okay. Let's flip one sheet back on
22 Exhibit 16. Sorry. Backwards one page.

23 A (Witness complies.)

24 Q So it looks like the door side.

25 A Yeah.

Page 1620

1 Q Is that the A side that you're
2 referring to of the warehouse?

3 A Yes.

4 Q So do you recall which -- which doors
5 were already open and what you're talking about
6 a small commercial door?

7 A Like I had mentioned earlier, Google
8 Images obviously are taken at different times.

9 Q Right.

10 A And that the aerial one correctly
11 positions that first tractor trailer to be on
12 those -- in this image on the far left. It's
13 parked at one of those -- it's at the far left
14 door.

15 Q Okay.

16 A So the door that we essentially opened
17 is the smaller door to the right.

18 Q Okay.

19 A The doors that Truck 5 refers to, I
20 believe, are the two tall doors --

21 Q Okay.

22 A -- that are opened.

23 Q Okay. Those were already opened when
24 you got on the A side?

25 A Yeah.

Page 1621

1 Q So you opened the second one from the
2 right -- or from the left? Sorry?
3 A Yes.
4 Q The small one?
5 A Yes.
6 Q All right. And then what -- what do
7 you do next then at the fire scene?
8 A So we -- we open the door. Again,
9 there's some long ramps. So I open the door.
10 My crew is kind of climbing the ramp. They ask,
11 hey, do you want us to go and finish opening the
12 door? I'm like, yeah, let's get that door open.
13 That was our assignment. We're accomplishing
14 our mission.
15 Q Right.
16 A And this -- the process of me putting
17 -- or Truck 8 putting eyes on this door from the
18 time that we see it until the time it's opened,
19 it could be a minute.
20 So the assignment from Chief Faust of
21 coming and opening this overhead door, while we
22 may have spent some time navigating back to the
23 rig and getting over there, it was probably five
24 to six minutes that -- that this is all
25 occurring. But the actual act of raising the

Page 1623

1 incorrectly.
2 The assignment was to open an overhead
3 door. There's variable types of ventilation:
4 horizontal, positive pressure, vertical
5 ventilation. Those were not given. It was very
6 specific to open an overhead door.
7 So once that happens, the ventilation
8 activity is essentially completed. Until we
9 understand or, at least for me, understand
10 the -- the involvement of the fire is
11 internally, I cannot get -- or ventilation
12 cannot get aggressive. Okay.
13 Q At this point you still haven't been
14 inside the -- where the -- the fire is going on?
15 A No. I've never been interior other
16 than the electrical vault. But like I said, it
17 was a small room divisioned off from the main
18 part of the building.
19 Q Okay. And Benson -- Ms. Benson and
20 her crew at this point had been inside already;
21 correct?
22 A Yes. Clearly, their assignment --
23 they reported that they were in the fire, at the
24 seat of the fire, origin of the fire. There was
25 some radio traffic kind of -- clearly

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1 door, it wasn't locked, it took forty-five
2 seconds to a minute to get it done.
3 I then have to kind of walk down to
4 get to the lower portion of the ramp. Me and my
5 crew essentially meet at the -- at the --
6 there's a walk- through door in that photo. And
7 there's some pallets. We essentially meet at
8 the tall overhead door.
9 Q Okay. And then what do you proceed to
10 do?
11 A We're now about twenty-six to thirty
12 minutes into this incident. We had water on the
13 fire early. But by the sound of radio traffic,
14 smoke conditions, like we are not getting a
15 handle on this.
16 Q Uh-huh.
17 A And so, again, ventilation -- you just
18 can't impose various ventilation tactics without
19 doing additional size-up. Because now we have
20 multiple firefighters inside the structure. And
21 changing the flow path is what it's referred to,
22 creating excessive holes or -- or ventilation in
23 the wrong way can actually enhance the fire and
24 cause it to grow, which essentially puts
25 people's life (sic) at risk when done

Page 1624

1 identifying their location, and they had been
2 there for nine or ten minutes --
3 Q Okay.
4 A -- prior to our encounter on the A/B
5 corner.
6 Q So you go in for the first time. What
7 do you observe?
8 A We navigate in. There's -- again,
9 this is a large structure. There -- the smoke
10 kind of ebbs and flows, but you can -- you can
11 look into the structure maybe 20, 30 feet, and
12 you can see smoke. You have got smoke overhead
13 (indicating).
14 But as we got closer and closer to the
15 fire and essentially we're navigating by sound
16 at this point. We can hear firefighters. We
17 can hear water application going on. So we're
18 kind of navigating towards that direction. I
19 believe Firefighter Dyer would have this thermal
20 imager. And we -- we share that amongst
21 ourselves, depending on what one another's
22 activities are. So that would have helped us,
23 you know, to get where everybody is at.
24 So essentially we're trying to get to
25 the area of the fire to see the extent of the

Page 1625

1 fire, and I'm beginning my own size-up of what I
2 see and can ascertain.

3 Q Okay. Before we get into more detail,
4 when you say "thermal imager," is that the same
5 thing as TIC?

6 A Yes. TIC is an acronym for thermal
7 imaging camera.

8 Q Okay. What is that used for?

9 A It's been in the fire service. We --
10 Lincoln Fire had one when -- when I started my
11 employment. Throughout the years, I -- I was an
12 individual that spearheaded and researched
13 thermal imagery. And we've -- I acquired four
14 thermal imagers back in 2001, I believe. They
15 went on the truck companies, and there has been
16 -- I've been on that committee for many, many
17 years.

18 And the project came back up. And in
19 cooperation with Chief Engler and the diligence
20 of many firefighters, that committee put
21 together a proposal. And now every fire company
22 in town has a thermal imager, which promotes for
23 the safety of the firefighter. And it helps
24 facilitate rescues of civilians.

25 Q Okay. So then -- you were talking

Page 1626

1 about you enter the warehouse. You're doing
2 your size-up. What do you do next?

3 A So essentially there's a lot going on
4 in the interior. There's, again, on -- when --
5 prior to entry, I had mentioned earlier that
6 Truck 8 was Par 4 coming on the A/B corner.

7 Q What does that mean?

8 A That means I'm Par 4. Myself and my
9 three crew members, we are all currently
10 together.

11 Q Okay.

12 A When I kind of come around and we're
13 opening this door, my driver, Jason Love, he is
14 now in his turnout gear, air pack, he's ready to
15 go in with this.

16 I don't normally use my driver on the
17 interior. I want my driver doing support
18 activities on the outside.

19 Q What are the support activities that
20 your driver does?

21 A He may be bringing additional
22 equipment --

23 Q Uh-huh.

24 A -- to -- whatever we are assigned,
25 we've talked and trained like, hey, if we get

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1 this assignment, this is the complement of cache
2 that we bring. We can only carry so much.

3 So he might be bringing like
4 stepladders, additional tools, things like that.
5 At this particular moment because we're now deep
6 into this incident and it's not been declared
7 under control and given the location to where
8 Truck 8 previously had positioned, that was not
9 adequate to do any type of rooftop activities.
10 Whether this has now changed from an offensive
11 attack to a defensive attack. I asked him, I
12 need you to go back to Truck 8, and I need you
13 to do a corner set on the Bravo/Charlie corner.
14 So he is now doing that activity. So I'm
15 managing that. I get inside knowing that we
16 still don't have control of the fire. I'm doing
17 my size-up.

18 Again, one of the activities that --
19 when we were on utility control and my size-up
20 on the exterior of the building, I recognized
21 that there was two large negative pressure fans
22 to help ventilate the structure. During just
23 normal operations, they can turn the fans on,
24 much like a bathroom exhaust fan to help that.
25 I make note of that.

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1 And I'm wondering all -- like, when
2 can I put those in play? When can I use them?
3 But in order for me to use them, I have to make
4 sure that the fire has been extinguished again
5 because of flow path and air path and all those
6 type of things.

7 So we get interior. The original
8 crews that were in there, like Engine 5, perhaps
9 Engine 2, Engine -- Engine 10, they are now kind
10 of exhausting their air supply of their packs.
11 But because we had spent -- late on arrival and
12 less time on air, we're going to have ample
13 supply of air. And it's documented in the radio
14 transcript that about the time we're going in,
15 they spend a few minutes in there. Now, they're
16 on low air. So they are exiting.

17 So there's a multitude of things that
18 we're going to have to be doing here in the next
19 few minutes. Locate the fire, the seat of the
20 fire. Probably fire extinguishment because
21 crews are leaving.

22 Q The crews that were leaving at the
23 time, did you observe them having any difficulty
24 finding and exiting -- finding an exit and
25 exiting?

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1 A No. The incident command would radio
2 them: You're low on air. And they would exit,
3 and there's no conversations, no problems. They
4 just left the building.

5 Q Okay. And so you're sizing this up.
6 Evaluating all of this. This is at the same
7 time. And at this time you still have not heard
8 any order that Benson or Truck 1 is to report to
9 you or assist you; correct?

10 A I'm still operating as a single
11 resource. I'm in charge of nobody but myself
12 and my crew.

13 Q Okay. And during this time is when
14 Ms. Benson said she was approaching you, asking
15 you what to do. Do you recall that?

16 A When we got in and around the trash
17 compactor, again, I'm trying to do a multitude
18 of things. And Ms. Benson was repeatedly asking
19 me what -- what she should do or what -- what
20 Truck 1 should do.

21 And while I'm aware of that, again
22 I've got multiple activities I'm trying to kind
23 of juggle at the same time.

24 Q Okay.

25 A And after several minutes, both FAO

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1 Roberts and Morgan Hurley, the trainee, they
2 finally understood. Like, if we just do what
3 Truck 8 is doing, if we just complement their
4 effort, that's what we're doing. It's going to
5 help put the fire out.

6 Q So Roberts and Hurley were helping do
7 that? Knew to do that?

8 A Yeah. They were helping move hand
9 lines. I think at one point -- because Morgan
10 was a recruit and I think that either Dyer or
11 Borchers handed off the hand line to her so she
12 could get some nozzle time and experience and
13 that. So, yeah, we were working as a group at
14 that point.

15 Q You didn't have to tell Roberts or
16 Hurley what to do?

17 A No. They chipped in and started
18 helping.

19 Q Okay. And at this time also if Ms.
20 Benson is asking you what to do, what to do, do
21 you have any authority to give her orders?

22 A No. I'm not under the impression that
23 I have to be not only assigning my crew to
24 activities, nor to the Truck 1 crew. They're
25 not my responsibility.

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1 Q Okay. And you had your own
2 responsibilities to complete; correct?

3 A Yes.

4 Q Okay. Would it be normal to stop and
5 explain in detail what somebody should do at a
6 fire scene in that scenario?

7 A There was a handful of things that
8 were kind of uncommon that were happening in
9 this time frame. But to be engaged in an active
10 fire scene, trying to mitigate the fire scene,
11 direct your crew, worry about aerial
12 positioning, sprinklers, fire extension control,
13 those are emergent activities. Those are things
14 that have to happen right now. And trying to
15 stop and tell somebody what to do, how to do it,
16 that doesn't happen in the emergent scene. That
17 happens at the training scene. And the emergent
18 scene is not a training ground. It's a proving
19 ground.

20 Q We've heard other firefighters testify
21 that you're a man of few words at fires. Would
22 you agree with that?

23 A Yes, I would agree with that. I
24 believe in actions and not words.

25 Q Okay. Ms. Benson claims that you were

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1 ignoring her. Were you ignoring her at the fire
2 trying to put her in danger in any way?

3 A No. I was attempting to assess what
4 was going, size-up, and actually perform fire
5 extension activities.

6 Once we got there, the other crews had
7 left. We are now performing, which, again, as I
8 stated earlier, is a very common assignment for
9 a truck company. That was Truck 1's original
10 assignment, fire extension. And now I have
11 entered the building to work on fire extension.
12 And when I mentioned a moment ago, like uncommon
13 things going on, Truck 1's original assignment
14 was fire extension.

15 And as I've explained that, unless you
16 encumber some kind of difficulty, you're
17 expected to complete your assignment. Once you
18 do that, you tell command. If you can't, you
19 tell command. But to be in the role of fire
20 extension and its importance to stop that and
21 volunteer for another assignment, that is
22 just -- that's not common.

23 Q So what she had done was uncommon in
24 your experience?

25 A Yes.

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1 Q Okay. And should Benson have known --
2 do you believe Benson should have known what to
3 do at the warehouse fire given her years of
4 experience at that point?

5 A Yeah, I believe so. I feel like that
6 Firefighter Benson had maybe been assigned to
7 Truck 1 for one to two years. And, again, the
8 common practice of fire extension is essentially
9 performed, or it's an assignment at almost every
10 fire Charlie that we go to. It should be a very
11 learned skill.

12 Q So fair to say you were busy fighting
13 the fire. And in the back of your mind, you
14 also have this no contact order you have to
15 abide by; correct?

16 A Correct.

17 Q And you can't give her orders because
18 you're not her supervisor; correct?

19 A Right.

20 Q In the time frame that you're interior
21 together -- or inside the warehouse with Benson,
22 was that about ten minutes, tops?

23 A Yeah. It was somewhere between nine
24 and ten minutes that we were in and around the
25 trash compactor together.

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1 Q Okay. So when you were walking to and
2 from your crew and other people, that would be
3 common within the fire scene?

4 A Yes.

5 Q Okay. And walking away and to --
6 you're not abandoning your crew by leaving their
7 physical area, are you?

8 A No. I'm oriented within the
9 structure. They know where they're at. Again,
10 that all depends on your comfort of training.
11 And like I stated, I have a highly trained crew,
12 and one I'm very proud of.

13 Q Okay. Did you do anything to cause
14 Ms. Benson to be disoriented?

15 A No.

16 Q Okay. Ms. Benson claims as you know
17 in her federal affidavit that she filed that you
18 abandoned her in a dangerous burning warehouse,
19 and you understand that allegation was made;
20 correct?

21 A I do. But not only --

22 MR. CORRIGAN: I'm sorry. Would
23 you cite the page and line that you're
24 referencing in the affidavit?

25 MS. GUTTAU: Sure. If you want

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1 Q Okay. But you were doing other things
2 as well at that time? You wouldn't necessarily
3 always stand by the other firefighters or even
4 your crew members physically?

5 A Yeah, that would be correct. As a
6 company officer, again, just like the incident
7 commander, you want your incident commander to
8 be about five steps ahead of the current event.

9 As a company officer, I want to be a
10 couple of steps at least ahead of what the
11 activities that my firefighters are doing. So
12 there's the overall plan, the action plan for
13 the incident. But as I go and do my size-up, I
14 do a size-up. I give an assignment to my
15 firefighters, do this. But then I'm off like --
16 I'm expecting that to be successful. I'm
17 looking, okay, what's going to happen next to
18 help mitigate the fire.

19 So I may have dialogue with them. I
20 might be looking at the trash compactor. Again,
21 I'm trying to coordinate the opening of a
22 Charlie walk-through door that we had forced
23 earlier. So that's putting me geographically
24 covering, you know, 30 to 40 feet in and around
25 the fire area.

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1 to look at 19, she says -- paragraph 17: Mahler
2 --

3 MR. CORRIGAN: Let me get there.
4 One second.

5 MS. GUTTAU: Exhibit 19.

6 MR. CORRIGAN: Okay. And page.

7 MS. GUTTAU: Yeah. Page 3,
8 paragraph 17.

9 So, first, she says, Mahler
10 abandoned me, Roberts, and Hurley in an IDLH
11 environment immediately dangerous to life or
12 health with no direction.

13 MR. CORRIGAN: Okay.

14 MS. GUTTAU: She then goes on to
15 say that, in paragraph 33, she refers to her
16 complaint on May 5th and says that she sent this
17 to Faust and Witte after Mahler abandoned me in
18 a dangerous warehouse fire.

19 And then in the complaint that
20 she cited, which is -- let me find that. 15,
21 R15 -- she talks about that abandonment. At
22 this point I realized Mahler had abandoned us in
23 an unsafe environment. And she states in her
24 last sentence: His refusal to communicate could
25 have injured or killed me, FAO Roberts, and FF

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1 Recruit Hurley.
 2 Q (By Ms. Gutttau) So in regards to the
 3 time frame where she claims that you abandoned
 4 her in a dangerous burning warehouse, did she
 5 actually exit the warehouse before you?
 6 A I just want to make sure that it's
 7 clear that I didn't -- the accusation is that I
 8 didn't just abandon her.
 9 Q Right.
 10 A That I abandoned two other colleagues
 11 as well.
 12 Q Yeah. So in regard to the time frame
 13 where she claims you abandoned her, Hurley, and
 14 Roberts in a dangerous burning warehouse, did
 15 she and they actually exit the warehouse before
 16 you?
 17 A Yes, she did.
 18 Q Okay. If she thought she was
 19 reporting to you at the time as she later
 20 claimed, she should tell you if she was leaving
 21 the warehouse; correct?
 22 A If -- if she truly believed that she
 23 was working for me under the capacities in which
 24 her documents say, it is her responsibility to
 25 tell me, whether in person or via the radio,

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1 A I agree with their assessment.
 2 Q Okay. Ms. Benson testified earlier
 3 last time that she's not stating -- now she's
 4 not stating you abandoned her and her crew in a
 5 dangerous burning warehouse, but rather she
 6 meant that you left her and her crew without
 7 orders or directions, which could have
 8 endangered her.
 9 Did you leave her without orders or
 10 directions in a manner that would have
 11 endangered her?
 12 A No. But I guess that's a different
 13 position than the position that we would have
 14 had either a year ago or during the injunction.
 15 Q Okay. What was your understanding of
 16 the position then?
 17 A The injunction essentially was very
 18 clear that I had abandoned them and to -- either
 19 injured or to be killed, all three of them. And
 20 that the injunction also was asking an
 21 investigation, essentially discipline, on me.
 22 So that is very clear what -- what Ms.
 23 Benson wanted at the time. And now we're --
 24 again, it sounds like we're minimizing from what
 25 we did a year ago or what they were asking for.

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1 that they were exiting low on air.
 2 Q Okay. That never happened, did it?
 3 A No. That's also supported by the
 4 radio traffic because the communications are
 5 between Faust and Truck 1, which further
 6 substantiates that nobody believed that they
 7 were working for Truck 8.
 8 Q Okay. And when she claims that you
 9 abandoned her and her crew, were there other
 10 firefighters still in the warehouse with you?
 11 A Well, certainly myself, Steve Dyer,
 12 and Trent Borchers were in there. There could
 13 have been maybe lingering crews re- -- like I
 14 had stated earlier, Engines 5 and 10 were coming
 15 out, and perhaps some other crews were coming in
 16 to replace them. But I would -- I would have to
 17 review the timeline on that.
 18 Q Okay. And you seen the affidavits
 19 from the other -- your crew members and her crew
 20 members where they all indicated that they did
 21 not believe they had been or that you had
 22 abandoned anybody in an unsafe environment.
 23 Have you seen those affidavits?
 24 A I've seen those documents, yes.
 25 Q Do you agree with their assessment?

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1 Q You didn't have authority to give her
 2 orders at that warehouse fire anyway, did you?
 3 A No.
 4 Q You said it seemed to minimize.
 5 Because at the time, she asked a federal judge
 6 to remove from your position, didn't she?
 7 A That's correct.
 8 Q Okay. And the papers certainly
 9 reported that you had abandoned her and her
 10 crew, didn't they?
 11 A I Googled my name this morning. I
 12 would encourage everybody to do the same, and
 13 you'll see the first thing that pops up.
 14 Q Okay.
 15 MS. GUTTAU: Can we take a --
 16 just a few minutes' break, sir? Restroom break?
 17 THE ARBITRATOR: Yeah. What do
 18 you need?
 19 MS. GUTTAU: Just five.
 20 THE ARBITRATOR: Okay. Off the
 21 record.
 22 (Recess at 11:13 a.m.)
 23 (Resumed at 11:23 a.m.)
 24 THE ARBITRATOR: Are you ready?
 25 MS. GUTTAU: We are.

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1 THE ARBITRATOR: All right. Go
2 ahead.

3 MS. GUTTAU: Okay. Thank you.

4 Q (By Ms. Guttau) So we'll kind of talk
5 about the tail end of the April 26 warehouse
6 fire.

7 I'm sure Mr. Corrigan will ask you about
8 your deposition that you gave in the federal
9 case; correct?

10 A Yes.

11 Q Okay. And in your deposition, you
12 testified that it did become apparent to you
13 that Benson thought she was probably reporting
14 to you. Do you recall that?

15 A Yes.

16 Q Okay. Does that change anything in
17 your mind? Do you have authority to tell her
18 what to do just because she thinks you should?

19 A No. Again, it can't be implied. Just
20 because somebody thinks that something is so,
21 that doesn't put it in play or make it right.

22 Q All right. Explain how that would --
23 how NIMS affects that, how -- under NIMS, just
24 because something -- somebody believes something
25 might be true, does that mean under ICS or NIMS

Page 1642

1 or any of the protocols you follow, that -- that
2 you meant that gives them orders?

3 A Well, let me see if I can speak just
4 to the NIMS component of this. That -- well,
5 okay, I don't work at NIMS. I don't have an
6 intimate knowledge of NIMS.

7 Q Uh-huh.

8 A But if just we look at it purely from
9 a standpoint that each and every firefighter can
10 have a thought or a comment that, well, I
11 believe this. I either have the training or
12 attended training, so I'm just going to
13 implement this technique, that completely
14 undermines the incident command structure and
15 doesn't follow NIMS.

16 So, again, the reason we do training,
17 the reason that the skill sets are repeated and
18 practiced is to establish a baseline of
19 communication and expectations and that you just
20 can't insert your own idea and expect people to
21 know that or operate under those parameters.

22 Q Okay. And if you had given her orders
23 without authority to do so, do you believe that
24 would have backfired and she would have
25 complained about that?

Page 1643

1 A Most definitely.

2 Q Okay. How could you have abandoned
3 Benson, Hurley, and Roberts if they left before
4 you?

5 MS. GUTTAU: Are you able to
6 hear?

7 THE ARBITRATOR: I can hear you.
8 But we're having a problem here.

9 MS. GUTTAU: Okay. We'll hold
10 on.

11 THE ARBITRATOR: We're going to
12 take another little break. We're going to jump
13 off and then jump back on. See if that works.

14 MS. GUTTAU: Okay. Thank you.
15 (Short recess.)

16 THE ARBITRATOR: Go ahead. Sorry
17 about that.

18 MS. GUTTAU: No problem.

19 Q (By Ms. Guttau) How could you abandon
20 Benson and her crew, Morgan Hurley and Matt
21 Roberts, if they left before you?

22 A Under the definition of "abandonment"
23 in Webster's Dictionary, that would be
24 impossible to abandon somebody if they left
25 prior to you.

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1 Q So Benson and her crew leave the
2 warehouse interior before you. What happens
3 next in the fire?

4 A So essentially at that point, it's
5 going to be myself, Dyer, and Borchers. And
6 again, we're performing those same activities in
7 and around the Dumpster fire. I've got them up
8 on top of it. And now we have water application
9 inside of this particular type of device.

10 Again, I'm communicating with Chief
11 Smith and FAO Love about these negative pressure
12 fans. And it's becoming -- as we spend the
13 next, I'll say five to twelve minutes, we are
14 now getting water applied to the seat of the
15 fire. It's -- there's natural ventilation
16 occurring. And the building starts to clear
17 visibly. And I -- at some point, I report to
18 command that the fire is now under control and
19 that we're hitting a few hot spots in order to
20 fully extinguish the fire. More than likely,
21 we'll need a K-12 saw, cut a hole in it, put
22 some more water on it.

23 Now, this fire is out, and I'm deeming
24 it under control.

25 Q Okay. And if you're deeming it under

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1 control at that time, before that time period,
2 did you believe that you or your crew's lives
3 were in danger, injury, or death?

4 A No. That's confirmed by another radio
5 transmission that -- that is provided that they
6 basically say, earlier on, we have water on the
7 fire and the temperature is below 100 degrees.

8 Q How is that significant? What's that
9 mean?

10 A Well, the conditions of, say,
11 spontaneous combustion or other items catching
12 on fire are greatly reduced because, as we know,
13 100 degrees is just a couple of degrees above
14 our body temperature. So that really does not
15 give any alarm bells to anybody that we have
16 high heat inside the structure.

17 Q Okay. And so when you exit the
18 structure, what happens then? Who takes your
19 place, or how does that all happen?

20 A So, again, at some point, we have a
21 defined amount of time that we're going to spend
22 on the interior. Our air is going to run low.
23 And I thought that Chief Faust did a very good
24 job of monitoring the crews inside, and he
25 radios me and says, hey, there's a Truck 8. I

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1 don't think there was a low air alarm. He just
2 -- he can look at a device in his vehicle that
3 is monitoring everybody's air supply. And he
4 just kind of notes, hey, somebody on Truck 8 has
5 got -- their air is getting low. Can you look
6 into that for me?

7 And I find my firefighters. And I
8 know the air consumption rates essentially. I
9 know who is going to run out of air before the
10 next one. So I find them. And they're like,
11 yeah, we're getting low on air. It's now under
12 control. We can see. And essentially then we
13 advise that we're come out, low on air. And I
14 think even before that happens, Faust is
15 contacting Truck 1's crew saying, hey, Truck 8
16 is going to be coming out soon. I need you guys
17 to replace them, which, again, is another
18 indication that they are outside long before we
19 are. So the abandonment thing is a moot point
20 also.

21 And as we exit the structure, Truck 1
22 is replacing us on the interior.

23 Q Okay. And had you heard Faust,
24 Incident Commander Faust say Truck 1 was to
25 replace you when you came out?

Page 1647

1 A Uh-huh. Yeah.

2 Q Okay. And so when you heard that,
3 then does Benson approach you as you're exiting
4 the structure?

5 A Yeah. We were walking out one of the
6 large overhead doors. And essentially my goal
7 at this point, one, we've been working pretty
8 hard for the duration of our bottle, and we were
9 kind of getting it. So I just kind of want to
10 get outside, get my face piece off, get a shot
11 of water. I'm going to have a conversation with
12 Chief Faust, hey, this is kind of what is going
13 on. I think he expects those updates from
14 people. So I was exiting kind of going down the
15 ramp. And Truck 1 or Firefighter Benson
16 approached me and said, well, what are we going
17 to be doing in there? And I said we were
18 chasing hot spots on the Charlie side. This is
19 what I advised her of what -- what our last
20 activity was.

21 Q You advised her of that, because you
22 had heard the incident commander tell everyone
23 that they were going to replace your crew;
24 correct?

25 A Yeah. I heard that. And

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1 acting-Captain Benson approached me and said,
2 hey, what are we doing in there? Again, I'm --
3 I'm not a wordy person. So I just -- after
4 working that long, I just kind of said, hey,
5 this is what we're doing, and they were going
6 in. They had already been in there a couple of
7 times. So they knew where they were headed.
8 And it's pretty easy to kind of engage in that
9 activity, I guess I should say.

10 Q Okay. And then after that time that
11 you exited, what did your -- you and your crew
12 do next?

13 A After having the dialogue with Benson,
14 I went over -- I told them to get their packs
15 off, replenish the air, a shot of water, cool
16 down.

17 I had a brief conversation with Chief
18 Faust. At this point also Battalion Chief Smith
19 is on the A side because there were no actions
20 or any firefighters on the C side.

21 I had a brief conversation with him.
22 And it was because -- again, if we look back to
23 some earlier statements, like there's three
24 trucks there. There's only four in the entire
25 City.

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1 So Chief Smith says, hey, get your
2 crew, get your equipment. We want you to get
3 back in service so that he can help serve the
4 rest of the City.

5 And so we kind of quickly -- we didn't
6 have a lot of equipment off, a lot of hand
7 tools. I told Jason Love to get the aerial put
8 back away. We refer to that as putting it back
9 in the bed.

10 And we're kind of rehydrating and --
11 within maybe ten minutes, we're back on the
12 road, headed back to quarters.

13 Q Okay. And back in service means go
14 back to the station, ready for a call?

15 A Uh-huh. Yes.

16 Q Okay. When you exited the warehouse
17 at that point as well, did you have any trouble
18 finding the exit?

19 A No. I -- I would say that there was a
20 few whiffs of smoke kind of in and around the
21 origin of the fire. And we had complete
22 visibility walking out.

23 Q And you could see the overhead doors
24 that were open?

25 A Oh, yeah. Plain as day.

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1 Q Okay. So at the scene or shortly
2 after the fire, did anybody raise any concerns
3 to you that there has been safety violations --

4 A No.

5 Q -- by you?

6 A None whatsoever. In fact, as myself
7 and my crew kind of climbed back in the cab, we
8 were -- we were being in kind of an upbeat
9 spirit. Thought we showed up and did some good
10 work and made a difference and helped out. And
11 we were pretty proud of what we did as far as
12 our actions at the fire.

13 Q Okay. And at the fire immediately
14 thereafter, did anybody raise any concerns that
15 you had abandoned anybody in a dangerous
16 warehouse fire?

17 A No. I was not aware of anything like
18 that.

19 Q Okay. If -- if a captain feels unsafe
20 and -- and disoriented and their life or their
21 crew's life is in danger, what are they supposed
22 to do?

23 A There's a number of things that you
24 can do, depending on the seriousness of that
25 feeling. Maybe that feeling is I'm -- I need to

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1 reorient myself or figure out where I'm at.

2 But, again, if it's like dangerous or
3 your life is at risk, you're going to certainly
4 have a thing that we call urgent traffic and
5 that it would be -- let's say it was me. Truck
6 8 command, urgent traffic. What that means is
7 that nobody else should be talking and that
8 you're having a dialogue. Maybe it's something
9 that is critical to the success of the action
10 plan.

11 Another option would be a Mayday.
12 That if your life or your crew's life is in
13 peril, we have an emergency button both on the
14 radio and our lapel mic that you press that and
15 then I think it's been increased now to where,
16 when you press that button, you have fifteen
17 seconds of open mic time that nobody can walk
18 on. You -- you can tell who you are, your
19 location, what you need, and then that goes off.
20 So there's the Mayday situation. And, again,
21 it's something that LFR trains on.

22 And as we had stated earlier today,
23 the terminal building would have been a good
24 example of what conditions exist of when is it
25 appropriate to do a Mayday.

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1 Q Uh-huh. Did you believe your life or
2 your crew's life was ever in peril when you were
3 in the warehouse?

4 A No, it wasn't.

5 Q In your opinion, was anybody's life in
6 peril during the warehouse fire while you were
7 there?

8 A No.

9 Q Did you observe any firefighters
10 during the time you were at the warehouse having
11 any difficulties entering and exiting the
12 warehouse?

13 A Not to my knowledge, no.

14 Q Okay. So when did Ms. Benson's
15 accusation regarding you allegedly abandoned --
16 abandoning her in the April 26th warehouse fire?
17 When did that first come to your attention?

18 A I -- I'm going to try to get as
19 accurate as possible. But I believe I have
20 received a phone call from the City's law
21 office. It may have been on a Saturday morning
22 informing me that these accusations had been
23 filed. And that because those accusations and
24 the severity of that accusation contradict a
25 quality company officer or a captain, and that

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1 the City of Lincoln had taken the advisement
 2 that they could no longer represent me in this
 3 particular case because of the severity.
 4 THE ARBITRATOR: Do you have a
 5 date on that, Captain? Do you know the date?
 6 Q (By Ms. Guttau) Do you know the
 7 approximate date?
 8 MS. GUTTAU: I can get you a
 9 date. Let's turn to --
 10 THE WITNESS: I'm sorry, sir. I
 11 don't know the exact date at the minute -- at
 12 the moment.
 13 MS. GUTTAU: I can lead you
 14 there.
 15 THE ARBITRATOR: Just tell me
 16 when?
 17 MS. GUTTAU: It was June -- she
 18 filed I on June 11th. So it would have been
 19 June 12th, a Saturday.
 20 MR. CORRIGAN: That's certainly
 21 not when you knew the accusations occurred.
 22 THE ARBITRATOR: All right. That
 23 would be the first time you heard about it?
 24 MR. CORRIGAN: Well --
 25 Q (By Ms. Guttau) The first time that

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1 you heard she had abandoned you -- that you had
 2 abandoned her in a dangerous warehouse fire?
 3 A Yeah. I --
 4 Q Okay. Did Aishah talk to you at all
 5 before about it?
 6 A Not -- not to that degree.
 7 Q Okay. What was your understanding
 8 when Aishah talked to you?
 9 THE ARBITRATOR: Hold on a
 10 second. I just thought you said the first time
 11 you heard about these allegations were on a
 12 Saturday morning.
 13 MS. GUTTAU: Yeah.
 14 THE ARBITRATOR: And, Counsel,
 15 you just told me that Saturday morning would
 16 have been June 11th.
 17 MS. GUTTAU: 12th.
 18 THE ARBITRATOR: Okay. So are
 19 you saying that wasn't the first time you heard
 20 about it?
 21 MS. GUTTAU: Well, I'll ask a
 22 clarifying question, because I think we're
 23 asking two things.
 24 THE ARBITRATOR: I think I'm
 25 asking one thing. Go ahead.

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1 Q (By Ms. Guttau) Okay. There's first
 2 an accusation that something had happened at the
 3 warehouse fire, and you were approached by
 4 Aishah to ask what happened at the warehouse
 5 fire?
 6 A Yes.
 7 Q Okay. Were you informed at that time
 8 by Aishah that you were being accused of
 9 abandoning somebody in a dangerous warehouse
 10 fire to die or be injured?
 11 A No, I was not.
 12 Q Okay. When was the first time that
 13 you learned of that level of an allegation
 14 against you?
 15 A It would have been the morning of June
 16 12th that the City talked -- the officer's
 17 attorney called me.
 18 Q So what -- what did Aishah just
 19 generally ask you about? What did you convey?
 20 A It would have been more of like what
 21 were your actions at the fire. What kind of
 22 things did you do, your activities, that kind of
 23 stuff.
 24 Q Okay. You weren't told Ms. Benson was
 25 accusing you of abandoning her crew to -- to --

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1 in conditions that could have killed or injured
 2 her?
 3 A No. I think Aishah was just gathering
 4 information what Truck 8's activities were.
 5 MS. GUTTAU: Does that clarify,
 6 sir?
 7 THE ARBITRATOR: That's fine.
 8 MS. GUTTAU: Okay.
 9 Q (By Ms. Guttau) So you get the call.
 10 And after the motion for injunction is filed,
 11 what was your understanding of what her motion
 12 was requesting in regard to you?
 13 A I was pretty shocked. And I think the
 14 first few minutes it was pretty blurry. I
 15 couldn't grasp the gravity of what I was being
 16 told.
 17 I guess I was just focused on the fact
 18 that the legal team that had been helping me is
 19 now gone. And I'm just left wondering what --
 20 what is my next move, what do I do next, how do
 21 I -- how do I proceed.
 22 So I don't think I even really
 23 understood the gravity of the situation.
 24 Q Okay. And did you eventually come to
 25 understand that she was asking a federal judge

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1 to -- to remove you from your job of fighting
 2 fires?
 3 A That's correct.
 4 Q How did that make you feel?
 5 A It gave me a sickness in my stomach
 6 that hasn't left me yet. Because at that point,
 7 I had worked twenty-six years to try to
 8 establish a distinguished career. My work
 9 product was in question. I have trust issues.
 10 I mean, there's a whole host of issues and
 11 thoughts that come into my mind that these
 12 accusations are undermining who I am as a
 13 person, who I am as a professional.
 14 Q Okay. And as a result of her
 15 accusations and motion, were you removed from
 16 work?
 17 A Yes, I was.
 18 Q For approximately how long?
 19 A Approximately three months.
 20 Q Okay. And how did that affect you?
 21 A Just when you think it couldn't get
 22 any worse, I received a call on Tuesday morning
 23 from my battalion chief, Chief Smith, saying
 24 that I am not to report to work and that there's
 25 a pending investigation on what happened at the

Page 1658

1 warehouse fire. And that's all he could provide
 2 me.
 3 Q Okay.
 4 A So now I am not at work. And I have
 5 no legal representation. And it was a very dark
 6 time.
 7 Q Okay. And Chief Smith told you this
 8 shortly after, a few days after the motion for a
 9 preliminary injunction had been filed?
 10 A Yeah. I was -- we were on Kelly days.
 11 Q Uh-huh.
 12 A So I was returning to work on
 13 Wednesday, and I believe he would have contacted
 14 me Tuesday morning to inform me that I didn't
 15 need to report to work.
 16 Q How long were you kept off of work?
 17 A Like about twenty-seven to thirty
 18 shifts, I believe. So that could be a duration
 19 of right around three months.
 20 Q Okay. And even though you were on
 21 paid leave; correct?
 22 A Correct.
 23 Q Were you denied opportunities to work
 24 overtime?
 25 A That's correct.

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1 Q So it caused you a financial burden?
 2 A Yes.
 3 Q Did it cause you emotional distress?
 4 A Tremendous emotional distress.
 5 Q In what ways?
 6 A I -- one, I'm home. I take a lot of
 7 pride of working at LFR. My wife has a myriad
 8 of questions. My oldest son is a physician, and
 9 he's asking questions. He's being asked
 10 questions in his particular field. Like, hey,
 11 is this your dad? Yeah, it's my dad. So my
 12 whole family is impacted by this.
 13 And before I have an opportunity to
 14 even contact my parents, my parents are made
 15 aware of it through the newspaper where they
 16 live. So now they're contacting me asking me
 17 what is going on.
 18 It just -- it's also picked up by the
 19 AP. It's now national news. Again, it's just
 20 like there was no -- no end to the bad press
 21 that -- essentially that I was getting.
 22 Q Where do your parents live?
 23 A In northeast Nebraska near Sioux City.
 24 Q They got the news before you had a
 25 chance to tell them?

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1 A Yes.
 2 Q Okay. And she made -- Ms. Benson made
 3 that accusation of abandonment in a dangerous
 4 warehouse fire of her and her crew in a public
 5 court filing, didn't she?
 6 A Correct.
 7 Q It was in her lawsuit that had been
 8 pending; correct?
 9 A Yes.
 10 Q And that lawsuit had been reported
 11 over the years at various times before, hadn't
 12 it?
 13 A Yes, it has.
 14 Q Did you have to change any of your
 15 family plans because of the investigation?
 16 A Yes. I was going to be taking a
 17 summer vacation. And in discussions with my
 18 battalion chief and Chief Engler, I needed to
 19 know if -- if I am free to go on my vacation.
 20 Do I need to cancel those plans? Do I need to
 21 be present for the independent investigation
 22 that was going to happen.
 23 And I was advised that I needed to be
 24 available to -- to complete that investigation.
 25 So I had to cancel all of my vacation plans.

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1 Q Okay. And within LFR itself, how did
2 it affect you and -- and your crew?

3 A The effect of this is far-reaching.
4 It goes beyond just myself, my family, and
5 certainly my crew. But now my crew is left
6 without their company officer, their captain.
7 They're -- essentially their leader. While
8 they're all talented individuals.

9 Now they're subjected to a million
10 questions from people. Now, on the days that
11 I'm supposed to be at work, there's an overtime
12 captain that's filling in for me. They don't
13 have their supervisor. There's all of these
14 accusations and -- and rumor mill is -- you
15 know, they're -- they're kind of right there
16 behind me. They're feeling it because they were
17 at the fire too. So it -- it -- it affected
18 them greatly. They were strong. They supported
19 me. But at the same time, you know, they needed
20 themselves taken care of.

21 And then as a result, they are all
22 then asked to come into the investigation. And
23 it just kind of never stops. It just kind of
24 snowballs on from there.

25 Q Okay. It's taken a lot of your time?

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1 A Yes, it has.

2 Q Okay. Was it disruptive to --
3 disruptive in the operation of your crew;
4 correct?

5 A Certainly. By -- by removing a senior
6 officer from the street with years of
7 distinguished service, it also doesn't -- it
8 takes away their leadership. It takes my
9 ability to perform my role. It's a financial
10 burden to the fire department to the City.
11 It's -- it -- really who's at most risk is the
12 citizens that -- that I'm asked to protect.
13 Because while there are lots of talented people
14 on Lincoln Fire, we're not a unit. We're not a
15 team. So whatever talents that I have to offer
16 the City, those are now off the shelf, so to
17 speak, or unavailable.

18 Q So once the motion for injunction was
19 filed and also a grievance, did you have an
20 understanding that the City hired a separate law
21 firm to investigate Ms. Benson's accusations?

22 A Yeah. I'm not sure how I became aware
23 of that. I think it was towards the end of the
24 investigation. But, yeah, I was aware of that.

25 Q Did you have any -- was that -- was

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1 your understanding that investigation was by an
2 attorney, Torrey Gerdes?

3 A Yes.

4 Q Okay. Did you have any involvement in
5 that investigation besides providing
6 information?

7 A I was asked to come in and provide
8 information and did that at a very lengthy
9 visit.

10 Q Okay. Were you honest with Ms.
11 Gerdes?

12 A Most certainly.

13 Q Okay. Did she appear impartial to
14 you, in your opinion?

15 A Yeah. I -- I, again, was very nervous
16 or skeptical going in. But within a few
17 moments, I could tell that Ms. Gerdes was again
18 a professional and I felt comfortable in sharing
19 her -- the information that she was asking --

20 Q Okay.

21 A -- in an unbiased environment.

22 Q Okay. And then I want to turn to R43.

23 MS. GUTTAU: This will be City
24 43.

25 THE WITNESS: (Witness complies.)

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1 Q (By Ms. Guttau) Can you tell me what
2 R43 is?

3 A R43 is the transcript of radio
4 traffic.

5 Q Okay. And were these your notes that
6 you created from the radio traffic?

7 A Yes.

8 Q All right.

9 A I spent several days listening to the
10 audio. And to my best ability put down every
11 word that was on the audio.

12 Q Okay. But at the top of the first
13 page where you have realtime/compressed time,
14 tell me what -- what that means.

15 A Originally, I was provided what's
16 known as the compressed time. And the
17 compressed time is there would be a radio
18 transmission, and then a few seconds later there
19 would be another radio transmission. What is
20 really happening is they're cutting all of the
21 dead airtime off of that. But that does not
22 depict an accurate timeline or a duration of how
23 long did an event last when it's compressed.

24 I then asked for the uncompressed
25 audio. So when we look at the column on the

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1 left is the uncompressed, and on the right is
 2 the compressed. But really the main focus is
 3 the -- the left column is -- is the true
 4 timeline of the events that happened at the
 5 warehouse fire.
 6 Q Okay. The realtime elapsed?
 7 A Yes.
 8 Q Okay. About halfway through that
 9 packet, if you go to where it says at the
 10 bottom, City 67598, and at the top it says
 11 warehouse fire notes.
 12 A Uh-huh.
 13 Q Can you tell me what those are?
 14 A This is again another document that I
 15 created. And as -- on completion of the audio
 16 transcribing, that began to allow me to focus on
 17 what was -- what did each one of these radio
 18 transmissions mean. What does it mean and
 19 what's expected of the crew to do and kind of
 20 gives some context to that radio transmission.
 21 Q Uh-huh. Okay. And then at the very
 22 end, there's those photographs that I think are
 23 marked as a separate exhibit. Were those photos
 24 you had pulled from Google Map?
 25 A Yes. Those --

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1 Q Okay. Have you had a chance to review
 2 her report since -- since it was issued?
 3 A Yes, I have.
 4 Q Okay. And that would be R11. I'm
 5 going to flip back.
 6 MS. GUTTAU: We're at City 11,
 7 R11.
 8 THE WITNESS: (Witness complies.)
 9 Q (By Ms. Gutttau) And is that the
 10 report that you saw that Ms. Gerdes issued?
 11 A Yes, this is the report.
 12 Q Okay. Did you have a chance to read
 13 it?
 14 A I have. A couple of times in fact.
 15 Q Does her report accurately reflect
 16 what you told her in the places that she cited
 17 to you?
 18 A Yes.
 19 Q Okay. Do you believe that Ms. Benson
 20 has been trying to get you disciplined for years
 21 now?
 22 A I do believe that.
 23 Q Even though you've returned to work
 24 since the motion was denied and Ms. Gerdes
 25 finished her investigation, does Ms. Benson's

Page 1666

1 Q Yes.
 2 A Correct.
 3 Q At not from the day of the fire. Just
 4 Google Map in general?
 5 A Yeah. I like to believe that I'm a
 6 prepared individual. And -- and these are
 7 things that I prepared so that I could -- if I'm
 8 asked questions, I can speak to it
 9 knowledgeably.
 10 Q Okay. After the motion for injunction
 11 was filed, do you know how the Court ruled on
 12 Ms. Benson's motion for an injunction relating
 13 to her allegations against you?
 14 A I believe it was denied.
 15 Q Okay. Then after Ms. Gerdes finished
 16 her investigation, did you learn of the outcome
 17 of her investigation at any time?
 18 A Not immediately. While I would
 19 have -- would assume that there was a report
 20 going to be completed, I did not see that right
 21 away.
 22 Q Okay. And you're -- but after her
 23 investigation was completed, you were returned
 24 to duty then; correct?
 25 A Yes, I was.

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1 public accusations still affect you today?
 2 A Yes, they do.
 3 Q In what ways?
 4 A I would say currently or -- or let's
 5 just say in the last sixteen months -- I've been
 6 a company officer since 2004. Typically, a
 7 normal timeline for a captain is that you have
 8 the desire to take the next promotional exam.
 9 And there's been one time period that I could
 10 have taken the test to be a battalion chief.
 11 One just got posted, I believe, yesterday. And
 12 my enthusiasm for the job has been curtailed by
 13 these activities for the past seven years.
 14 Whereas, I should be looking to use my talents
 15 and my experience in different ways.
 16 I feel like that the time dedicated to
 17 this event and the emotional distress prevents
 18 me from furthering my career. And it has even
 19 made me contemplate early retirement.
 20 Q Do you have one of your children on
 21 the job now?
 22 A Yes, I do. My middle son is now
 23 employed with Lincoln Fire, which I'm very proud
 24 of.
 25 Q And you should be. Has Ms. Benson's

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1 actions affected your children and your wife?
 2 A Yes. Obviously, my son that was --
 3 that is now on the job was going through the
 4 hiring process, and both my wife and I had
 5 concerns that, if Ms. Benson was comfortable
 6 making accusations towards me, that once my son,
 7 if and when, he was on the job and she was
 8 employed, that that type of behavior would carry
 9 over to him as well.
 10 Q Okay. How serious in your mind is an
 11 accusation that a fire captain abandoned
 12 somebody in a burning dangerous warehouse that
 13 could have killed or injured them?
 14 A In this particular profession, it is
 15 the most malicious and egregious accusation that
 16 could be made.
 17 Q You've dedicated your career to saving
 18 people's lives, haven't you?
 19 A Yes, I have.
 20 Q Do her accusations against you hit at
 21 the heart of what you do?
 22 A Yes, they do.
 23 Q Did you abandon Ms. Benson, Ms.
 24 Hurley, and Mr. Roberts in a burning dangerous
 25 warehouse fire on April 26, 2021?

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1 forty-five minutes for a lunch break. And then
 2 we will resume with Ms. Benson after that. And
 3 that should take us to the end of the day.
 4 THE ARBITRATOR: All right.
 5 Sounds good. 12:45.
 6 (Recess at 12:02 p.m.)
 7 (Resumed at 12:43 p.m.)
 8 THE ARBITRATOR: Ready to go?
 9 MS. GUTTAU: I think so.
 10 THE ARBITRATOR: John?
 11 MR. CORRIGAN: Yes.
 12 THE ARBITRATOR: I can't hear
 13 you.
 14 MS. GUTTAU: There you go. Can
 15 you hear us now?
 16 THE ARBITRATOR: Yes.
 17 MS. GUTTAU: Okay. Sorry.
 18 MR. CORRIGAN: Okay. So whenever
 19 you're ready, we'll get started.
 20 THE ARBITRATOR: All right. Go
 21 ahead.
 22 CROSS-EXAMINATION
 23 BY MR. CORRIGAN:
 24 Q Good afternoon, Captain Mahler.
 25 Just while we're on the -- you've got the

Page 1670

1 A I did not.
 2 Q Do you believe the damage that she has
 3 caused you and LFR by her accusations can be
 4 undone?
 5 A That bell cannot be unrung.
 6 Q Okay.
 7 MS. GUTTAU: Thank you. I have
 8 nothing further at this time.
 9 THE ARBITRATOR: Okay. So a
 10 little lunch break now.
 11 MS. GUTTAU: Okay.
 12 THE ARBITRATOR: Do you have
 13 questions? Are you going to have some cross?
 14 MR. CORRIGAN: I will, yes.
 15 THE ARBITRATOR: Okay. Just
 16 checking.
 17 MR. CORRIGAN: Yeah.
 18 THE ARBITRATOR: So, let's see.
 19 Twelve o'clock, 12:02. How much time do you
 20 guys want?
 21 What other witnesses are we going
 22 to have today?
 23 MR. CORRIGAN: I think we should
 24 be able to finish with Mr. Mahler this
 25 afternoon, if we take maybe a half hour,

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1 Gerdes report in front of you; right?
 2 A Yes.
 3 Q That is R11; right?
 4 A That's correct.
 5 Q All right. So prior to going to see
 6 her, you provided Chief Engler with the notes
 7 that you prepared; right?
 8 A I -- what notes?
 9 Q The notes that you prepared. You
 10 listened to the radio traffic of the call. And
 11 you prepared your detailed notes that we already
 12 discussed with the time stamps on them?
 13 A I don't believe that that was sent. I
 14 took that to the Gerdes appointment.
 15 Q All right. Why don't you go look at
 16 the red book then -- I'm sorry, the black book.
 17 I'll ask you to look at 122. Is that an
 18 e-mail from you to Chief Engler dated July 1,
 19 2021, regarding your notes from the warehouse
 20 fire?
 21 A Yes, it is.
 22 Q Okay. So you sent -- your notes that
 23 you prepared, you sent to the fire chief on July
 24 1st of 2021; is that right?
 25 A That appears to be the time on the top

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1 Q Okay. So you're fit for duty?

2 A People wear glasses. So I compensate

3 my hearing loss with hearing aid.

4 Q Okay.

5 MR. CORRIGAN: If you want to

6 take a break, that's okay.

7 MS. GUTTAU: Can we take a little

8 break, restroom break? I lost him. We can't

9 hear. I think you're on mute.

10 THE ARBITRATOR: Can you hear me?

11 MS. GUTTAU: Yeah, we can hear

12 you. Can we take a restroom break?

13 THE ARBITRATOR: Yes. 2:50.

14 MR. CORRIGAN: 2:50.

15 MS. GUTTAU: Okay. Thank you.

16 (Recess at 2:36 p.m.)

17 (Resumed at 2:50 p.m.)

18 THE ARBITRATOR: All right. Go

19 ahead.

20 MR. CORRIGAN: We don't have any

21 more questions of Mr. Mahler.

22 THE ARBITRATOR: You pass the

23 witness?

24 MR. CORRIGAN: Yes. Redirect?

25 MS. GUTTAU: Yes. Thank you.

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1 A I would agree.

2 Q Okay. And those were the allegations

3 that the paper picked up on?

4 A Yes.

5 Q And they reported publicly, the AP,

6 you know, nationwide, that you had abandoned her

7 and her crew; correct?

8 A That's correct.

9 Q And your parents had to read about it

10 before you even had a chance to tell them?

11 A That's what they read. They read that

12 I left people to die. Not that I ignored them.

13 Q You testified you talked to Ms. Benson

14 both before and after going into the warehouse;

15 correct?

16 A That's correct.

17 Q Okay. And you felt that that was

18 appropriate communication with what was needed;

19 correct?

20 A Yeah. It provided direction on what

21 needed to be done.

22 Q Okay. And also in compliance with

23 your no contact order; correct?

24 A Yes.

25 Q Okay. Again, throughout this, you had

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1 THE WITNESS: I would like to say

2 something.

3 John, I didn't appreciate your

4 comment about my hearing.

5 MR. CORRIGAN: It was just a

6 joke, Shawn.

7 THE WITNESS: I didn't appreciate

8 it.

9 MR. CORRIGAN: Well, I apologize.

10 REDIRECT EXAMINATION

11 BY MS. GUTTAU:

12 Q Captain Mahler, you were asked a lot

13 of questions about whether or not you ignored

14 Ms. Benson in the fire.

15 But she did not allege in federal court

16 in a public filing that you ignored her, did

17 she?

18 A No, she did not.

19 Q She alleged that you abandoned her,

20 Hurley, and Roberts all in a dangerous warehouse

21 fire that could have killed or injured them;

22 correct?

23 A That was the accusations, yes.

24 Q Okay. That's way beyond just alleging

25 that you ignored her in the fire?

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1 never been assigned as a supervisor over Ms.

2 Benson, had you, during the warehouse fire?

3 A That never occurred.

4 Q You were asked about why you had not

5 previously reported telling her -- telling Ms.

6 Benson about asking incident command for an

7 assignment. Do you recall that?

8 A Yes, I do.

9 Q Asking incident command for an

10 assignment would be an obvious thing to do;

11 correct?

12 A Yeah. If you don't know what your

13 assignment is, the best place to get one is from

14 incident command.

15 Q Is that something you've told others

16 at other fire scenes?

17 A Yeah. I've used language like that

18 before.

19 Q And so something obvious like that

20 would not necessarily stand out in your mind,

21 would it?

22 A No. It's not nothing new for me to

23 say.

24 Q Backing up to the allegations in 2015

25 and 2016 regarding Ms. Benson's schedule and

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1 that a concept you're familiar with?

2 A Yeah. I've heard that language.

3 Q Can you tell us what you think that

4 means?

5 A I would say it means that each and

6 every member in the union would be offered the

7 same fair representation.

8 Q A duty that's owed to each member.

9 A I hesitate because of the oath that

10 was violated.

11 Q Okay.

12 A And I would assume that it would do

13 fair representation for a member in good

14 standing.

15 Q Have you ever filed any internal union

16 charges against Ms. Benson?

17 A I had discussions with Adam --

18 President Schrunk that the accusations that have

19 been against me by Ms. Benson violated that

20 oath. He downplayed that conversation saying

21 that it was difficult. We had to contact the

22 International to start those proceedings. And I

23 said, Ms. Benson violated the oath. These

24 things were intentional acts, malicious and

25 egregious and that that violated the oath.

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1 Q Okay. Okay.

2 A I would -- back to your previous

3 question. If it's -- if I've been fairly

4 represented. This process has been going on for

5 sixteen months. And even as recently as -- in

6 the last handful of months, my -- none of my

7 executive board, none of my union has reached

8 out to me, asked if I'm okay, do I need anything

9 from them. Were they going to come and sit with

10 me on -- to support me? Nobody contacted me.

11 Q Okay. You were asked about her

12 discipline and whether you were disciplined and

13 you were not disciplined, because, as you said,

14 you didn't do anything wrong?

15 A That's correct.

16 Q Okay. You never falsely accused

17 anyone of abandoning a fellow firefighter and

18 their crew in a dangerous burning warehouse that

19 could have killed or injured them?

20 A I never made that accusation.

21 Q The effect of that accusation against

22 you has been life-changing?

23 A It has.

24 MS. GUTTA: Nothing further.

25 THE ARBITRATOR: John?

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1 And I said, why do we take the oath if

2 we're not going to hold people accountable.

3 Q Did you file a charge of -- internal

4 union charges against Ms. Benson?

5 A I did not.

6 MR. CORRIGAN: Okay. I don't

7 have any other questions.

8 THE ARBITRATOR: Heidi?

9 MS. GUTTAU: That opened the door

10 to just a couple of things. Real briefly.

11 FURTHER REDIRECT EXAMINATION, CONT'D

12 BY MS. GUTTAU:

13 Q Do you feel that the union -- do you

14 personally feel the union has fairly represented

15 you?

16 A No, I do not.

17 Q Okay. Did you learn from the -- the

18 Nebraska Equal Opportunity Commission -- you

19 were asked a little bit earlier about the

20 allegations of not providing Ms. Benson training

21 on the truck back in 2015, 2016. Did you ever

22 learn that the NEOC found her -- her allegations

23 in that regard were without cause?

24 A I don't believe I ever saw the NEOC's

25 final report. So I -- that's news to me.

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1 MR. CORRIGAN: I have no

2 questions.

3 THE ARBITRATOR: Captain Mahler,

4 you're excused, sir.

5 THE WITNESS: Thank you.

6 MS. GUTTAU: How would you like

7 to proceed, sir?

8 THE ARBITRATOR: Okay. So what

9 do we have left besides the cross of Ms. Benson?

10 MS. GUTTAU: We will probably

11 call -- unless you're going to call him in your

12 case. We'll call Schrunk. We're going to

13 briefly call President Schrunk. I don't think

14 it will take real long. And then we would --

15 besides Ms. Benson's cross, we would have

16 President Schrunk and then a brief rebuttal with

17 Chief Engler, and that won't be very long.

18 THE ARBITRATOR: So that will

19 take at least another half a day or another.

20 THE REPORTER: Do you want this

21 on the record?

22 MR. CORRIGAN: No.

23 (An off-the-record discussion was had,

24 and at 3:47 p.m., the proceedings were continued

25 to September 6, 2022.)

1 FEDERAL MEDIATION AND CONCILIATION SERVICE
 2 BEFORE ARBITRATOR STEVEN RUTZICK
 3 LINCOLN FIREFIGHTERS) FMCS CASE NO.
 4 ASSOCIATION, IAFF LOCAL) 22103-00847
 5 644, and AMANDA BENSON,)
 6)
 7)
 8)
 9)
 10)
 11 vs.) VOLUME VIII
 12) PAGES 1797-2083
 13 CITY OF LINCOLN,)
 14)
 15)
 16 Respondent.)
 17)
 18)
 19)
 20)
 21)
 22)
 23)
 24)
 25)

10 ARBITRATION HEARING held before
 11 Arbitrator Steven Rutzick (via Zoom), with Sally
 12 R. Parrack, RPR, CSR and Notary Public for the
 13 State of Nebraska, counsel and all parties
 14 present at the City-County Building, 555 South
 15 10th Street, Suite 300, Lincoln, Nebraska,
 16 beginning at 9:07 a.m., on the 6th day of
 17 September, 2022.

23 * * * * *

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20 ALSO PRESENT: Mr. Ryan Moser, Vice President
 21 IAFF Local 644; Mr. Dave Engler, Fire Chief;
 22 Tiffany Leasure, Paralegal for City of Omaha

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<p style="text-align: right;">Page 1809</p> <p>1 * All exhibits offered with objections to</p> <p>2 Union's 101, 102, 103, 147, 149, 150; and City</p> <p>3 Exhibits 20, 21, 38, 46, and 47</p> <p>4 * Union Exhibit 149 was offered and received on</p> <p>5 page 142</p> <p>6 * Union Exhibit 150 was offered on page 143 and</p> <p>7 received on page 144</p> <p>8 * Union Exhibit 156, Telephone Log Activity, was</p> <p>9 marked on page 750</p> <p>10 * City Exhibit 156, E-mail to Aishah from</p> <p>11 Mahler, was marked on page 1738</p> <p>12 * City Exhibit 50 was marked on June 22nd, 2022,</p> <p>13 offered and received on page 571</p> <p>14 ** ** **</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 1810</p> <p>1 (On September 6, 2022, at</p> <p>2 9:07 a.m., the proceedings continued as</p> <p>3 follows:)</p> <p>4 MR. CORRIGAN: The Union is going</p> <p>5 to call Captain Brian Giles.</p> <p>6 THE ARBITRATOR: All right. Give</p> <p>7 me one second here. Mr. Corrigan, all right.</p> <p>8 All right. Would you -- Do you</p> <p>9 want to swear him in, Court Reporter?</p> <p>10 THE REPORTER: Yes, sir. Please</p> <p>11 raise your right hand.</p> <p>12 CAPTAIN BRIAN GILES,</p> <p>13 Having been sworn to tell the truth,</p> <p>14 the whole truth and nothing but the</p> <p>15 truth, testified as follows:</p> <p>16 THE ARBITRATOR: Would you state</p> <p>17 and spell your name for the record, please.</p> <p>18 THE WITNESS: It's, Brian,</p> <p>19 B-R-I-A-N, Giles, G-I-L-E-S.</p> <p>20 THE ARBITRATOR: All right. You</p> <p>21 may proceed.</p> <p>22 DIRECT EXAMINATION</p> <p>23 BY MR. CORRIGAN:</p> <p>24 Q Captain Giles, what is your position</p> <p>25 with the Lincoln Fire and Rescue?</p> <p> A I am a captain at Fire Station No. 16.</p>
<p style="text-align: right;">Page 1811</p> <p>1 Q How long have you been employed with</p> <p>2 the City?</p> <p>3 A This Thursday, September 8th, will be</p> <p>4 thirty-three years.</p> <p>5 Q In what capacity have you worked in</p> <p>6 the fire department?</p> <p>7 A In the fire department, I started</p> <p>8 November of 2000 as a firefighter. In summer of</p> <p>9 2004, I was promoted to fire apparatus operator,</p> <p>10 which is a driver position.</p> <p>11 In January of 2008, I was promoted to</p> <p>12 captain in the position I currently still hold.</p> <p>13 Q And prior to your work in the fire</p> <p>14 department, did you work in the City of Lincoln</p> <p>15 Police Department?</p> <p>16 A I did.</p> <p>17 Q How long were you a police officer?</p> <p>18 A A little over eleven years.</p> <p>19 Q As a captain -- You're an engine</p> <p>20 company captain?</p> <p>21 A I am.</p> <p>22 Q You're familiar with Ms. Benson?</p> <p>23 A I am.</p> <p>24 Q In addition to your work on the fire</p> <p>25 department, have you held offices or positions</p>	<p style="text-align: right;">Page 1812</p> <p>1 with the Firefighters Local 644?</p> <p>2 A I have.</p> <p>3 Q And what were those?</p> <p>4 A I believe 2003 I was appointed to the</p> <p>5 executive board as an executive board member.</p> <p>6 And in 2007, I was elected vice president, a</p> <p>7 position that I held for three terms, or six</p> <p>8 years.</p> <p>9 Q And in addition to the training that</p> <p>10 you receive in the fire department through the</p> <p>11 City of Lincoln, have you had any other training</p> <p>12 or certification as a firefighter?</p> <p>13 A I've had a lot of training.</p> <p>14 Q Do you hold any certifications or</p> <p>15 licenses as a firefighter?</p> <p>16 A I'm credentialed as an executive fire</p> <p>17 officer through the National Fire Academy in</p> <p>18 Emmitsburg, Maryland, which would be the most</p> <p>19 prominent one.</p> <p>20 Q What is an executive fire officer?</p> <p>21 A It's a four-year program through the</p> <p>22 U.S. Fire Administration at the National Fire</p> <p>23 Academy that's somewhat equivalent to a police</p> <p>24 officer attending the FBI National Academy.</p> <p>25 It's a credential that, upon</p>

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1 communicating enough?
 2 A I'm sorry?
 3 Q You alleged in your lawsuit he was not
 4 communicating with you enough at that time in
 5 2014 -- I'm sorry -- 2015?
 6 A Can -- can you cite like the specific?
 7 Q Yeah. You claimed he wouldn't assign
 8 you to truck. He wouldn't communicate with you
 9 about what needed to be done or training?
 10 A Right.
 11 Q And you allege that in your lawsuit?
 12 A Yes.
 13 Q Okay. And he did communicate with you
 14 with regard to a situation where the kitchen was
 15 not completely cleaned. Do you recall that?
 16 A I -- yes.
 17 Q Okay. And you also included that
 18 communication in your lawsuit against him as
 19 well?
 20 A Yes.
 21 Q Okay. And then in 2017, he did --
 22 Captain Mahler did communicate with you about a
 23 concern regarding another firefighter who had
 24 possibly touched you inappropriately. Do you
 25 recall that?

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1 A Yes.
 2 Q And you were provided a copy of that
 3 no contact order at the time it was issued;
 4 correct?
 5 A Yes.
 6 Q And so fair to say you've included in
 7 your lawsuit that you filed in or about 2018
 8 complaints against Captain Mahler regarding when
 9 he does not communicate with you and when he
 10 does; correct?
 11 A Can you -- sorry.
 12 Q Yeah. Fair to say that in your
 13 lawsuit that you filed against one of the
 14 defendants being Captain Mahler, you included
 15 allegations regarding times that he did
 16 communicate with you that you didn't feel were
 17 appropriate and times that he did not
 18 communicate with you; is that correct?
 19 A Yes.
 20 Q And that lawsuit is still ongoing
 21 today; correct?
 22 A Yes.
 23 Q You also testified in direct regarding
 24 the Kimberly Taylor Riley report issued in 2016.
 25 Do you recall?

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1 A Yes.
 2 Q Okay. And when he -- when Captain
 3 Mahler made that communication, you complained
 4 to the chief at the time about that; right?
 5 A Yeah. The complaint was not about the
 6 communication, the fact that he communicated
 7 with me. The complaint was about the substance
 8 of the communication.
 9 Q Okay. But it was a complaint about
 10 his communication to you?
 11 A Regarding what he said to me, yes.
 12 Q Okay. And as a result of your
 13 complaint, the chief issued a no contact order
 14 at that time; correct?
 15 A It -- it was always referred to me as
 16 a limited contact order.
 17 Q Okay.
 18 A There was still expectation that we
 19 communicate professionally for work-related
 20 things.
 21 Q Okay. But throughout we've been
 22 calling it no contact order via different
 23 witnesses. So if I refer to it that way, can we
 24 agree that we're talking about the order issued
 25 by the chief at that time in 2017?

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1 A The report, yes.
 2 Q Okay. You recall talking about that
 3 with Mr. Corrigan during your direct briefly?
 4 A Yeah. I recall going over it.
 5 Q Okay.
 6 A I don't really remember specifics
 7 right now.
 8 Q I won't go through it in detail. I
 9 just had a few questions about it. Isn't it
 10 true during the time she was investigating, Ms.
 11 Riley would text with you?
 12 A Yeah. She would call. We would text
 13 and send e-mails back and forth.
 14 Q Okay. And you don't have any evidence
 15 that she was doing the same for Captain Mahler,
 16 do you?
 17 A I -- no. I would have no way of
 18 knowing that.
 19 Q Okay. The City did not discipline
 20 Captain Mahler for anything contained in the KTR
 21 report, did it?
 22 A I'm not aware.
 23 Q Okay.
 24 A I'm not aware of any.
 25 Q Okay. Were you aware that it put him

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1 not Captain Mahler, was it?
 2 A No.
 3 Q Okay. Rather he had talked to you
 4 about it, and that resulted in the no contact
 5 order that we discussed earlier?
 6 A Correct.
 7 Q Okay. Let's just -- to refresh, let's
 8 turn to Exhibit 35. And that would be the red
 9 book.
 10 A (Witness complies.)
 11 Q Okay. Is Exhibit 35 the no contact
 12 order?
 13 A Yes.
 14 Q Okay. And at the time this was
 15 issued, you were not a captain, were you?
 16 A No.
 17 Q Okay. And so -- and you understood
 18 that Captain Mahler had to abide by the order of
 19 the chief; correct?
 20 A Yes.
 21 Q Okay. And you understood that any
 22 contact had to be in the presence of your direct
 23 supervisor or a chief officer; correct?
 24 A That -- that's one of the
 25 stipulations, yes.

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1 actually third-party administrators that
 2 administered that test? It wasn't LFR personnel
 3 administering the test, was it?
 4 A Right. Right.
 5 Q Okay. After the Union investigated
 6 that matter, did they withdraw the grievance?
 7 A I believe so, yes.
 8 Q You've also sued Chief Benisch;
 9 correct?
 10 A Correct.
 11 Q And who is he to you?
 12 A He was a battalion chief at Lincoln
 13 Fire and Rescue.
 14 Q Okay. You've also sued Chief Linke,
 15 Battalion Chief Linke; correct?
 16 A Correct.
 17 Q And who was he to you?
 18 A He was the interim fire chief.
 19 Q You've also sued Chief Jones. And who
 20 was he to you?
 21 A Battalion chief. And he oversaw -- at
 22 the time oversaw Station 8 personnel and was who
 23 the complaints originally were reported to and
 24 then did not -- did not respond or -- or
 25 intervene.

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1 Q And the second one is that orders
 2 given to you directly related to and in the
 3 course of an emergency incident; correct?
 4 A Yes.
 5 Q Okay. And at that time, he was a
 6 supervisor in rank and could give you orders;
 7 correct?
 8 A He was a superior, yeah.
 9 Q Okay. Mr. Corrigan also discussed
 10 that you had filed some charges with NEOC, or
 11 Nebraska Equal Opportunity Commission. The NEOC
 12 found no cause on your charges; correct?
 13 A If -- is that like one of the -- they
 14 denied it?
 15 Q Correct.
 16 A Yeah. So then, yeah.
 17 Q Okay. I want to skip ahead then to
 18 2019. Do you recall filing a grievance because
 19 you felt that the captain's test was unfair to
 20 you?
 21 A Yeah. I felt that the captain's test
 22 was -- had a portion of it that was rated in a
 23 way that would negatively impact female or more
 24 feminine presenting men.
 25 Q Okay. Did you learn that it was

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1 Q Okay. And in 2020, did you -- you
 2 also accused a work comp -- City work comp
 3 claims risk management employees of retaliating
 4 against you?
 5 A I raised concerns about the fact that
 6 they were not communicating with me. I also
 7 raised concerns because there was backdating
 8 done on my medical forms. And I brought that
 9 concern to Aishah Witte and, I believe, Chief
 10 Engler. I believe it's illegal to backdate work
 11 comp forms, any medical forms. And I brought
 12 that to their attention because it did result in
 13 me temporarily being considered AWOL and not
 14 being on work comp anymore and having to utilize
 15 my sick leave.
 16 Q Okay. And I believe we established in
 17 your deposition that you weren't sure who had
 18 backdated it, if it had to be the medical office
 19 doctor or somebody else?
 20 A Correct. I believe that the
 21 individual I spoke with at the medical office
 22 stated that that was normal. That staff in the
 23 office would put whatever date and information
 24 was needed on the form at the request of city
 25 risk management.

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1 Q Okay. And you don't have any evidence
2 that City risk management actually did that, do
3 you?
4 A Requested that it was backdated?
5 Q Right.
6 A I -- that was the reason I brought it
7 to Aishah Witte, and I believe it was Engler
8 because it was done, and we didn't know who had
9 done it.
10 Q Okay.
11 A And why it had been done. And I had
12 concerns. Because of my ongoing case with the
13 City and the director of HR. I was dealing with
14 lack of communication from HR. I was dealing
15 with an injury that had nerve damage where I was
16 having muscle atrophy in my hand and I was
17 concerned that I would actually have to be
18 disabled from the job.
19 No one would answer my calls or return
20 my calls. And then with no communication, I was
21 suddenly -- I suddenly had my status affected
22 through backdating, which as a medical provider
23 I know it's illegal. So I just gave all of that
24 information over so that it could be looked
25 into.

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1 your lawsuit; correct?
2 A Yes.
3 Q Okay. In 2021, you claimed that you
4 heard comments Captain Chad Roof made negatively
5 about women. And you complained about him;
6 correct?
7 A Yes.
8 Q You also claim you heard negative
9 comments by Matt Woitalewicz at the station;
10 correct?
11 A Yes.
12 Q In your direct examination -- I wrote
13 it down -- you testified Matt made public
14 attempts to attack me. What was he saying?
15 A Which -- are you talking in, like,
16 over the period? Which time are you talking
17 about?
18 Q When you said that he made public
19 attempts to attack me, what were you referring
20 to?
21 A With Matt Woitalewicz?
22 Q Yes.
23 A Matt Woitalewicz -- I mean, I could
24 refer to specifics in the charge. Are you just
25 asking off the top of my head?

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1 Q So just to confirm though. As you
2 stated, it was the medical provider who
3 backdated it; correct?
4 A I don't know who backdated it.
5 Q If it was illegal, have you pursued a
6 claim against the medical providers?
7 A I just gave it over to my supervisors.
8 Q Okay. Nonetheless, you accused in
9 your charge and lawsuit that the City was
10 retaliating against you in regard to that work
11 comp claim; right? Or injury?
12 A I don't know, yeah. Can you repeat
13 that?
14 Q Yeah. In your charge and lawsuit,
15 you've accused the City of retaliating against
16 you in regard to the work comp allegations that
17 you just discussed?
18 A Yeah. I believe it was retaliatory.
19 Q Okay. And you also have accused the
20 City was surveilling you; correct?
21 A Yes.
22 Q And you don't have any proof of that,
23 do you?
24 A No, I do not.
25 Q Okay. But you did include that in

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1 Q Yeah.
2 A Or would you like to go over the
3 charge?
4 Q Yes. Off the top of your head what
5 you recall.
6 A Okay. So one of the main portions of
7 the complaint regarding him was the -- the
8 repeated public comments he made regarding
9 training -- his perceived training deficiencies.
10 He also made public comments with
11 another firefighter about his -- his perception
12 of me not being talkative enough and then me
13 saying -- me being too talkative. And he also
14 made public statements stating that -- I
15 reported it -- regarding the Brady Papik
16 statements. I guess that was an exchange
17 between Brady Papik and Matt Woitalewicz where
18 there were comments stating that I just sit
19 there and say nothing along the lines of
20 contributing to a hostile work environment, how
21 someone -- it's not safe to work and not train.
22 Q Okay. Anything else?
23 A I'm sure. I mean, it would -- it
24 would be outlined in my e-mails where I reported
25 it or my -- all -- all of the evidence in the

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1 that they knew what the source was. The source
2 was the interim fire chief and he had been
3 disciplined for it. So there was a HIPAA
4 violation. And the interim fire chief was
5 disciplined for it.

6 Q But you don't know if the interim fire
7 chief learned it from hospital personnel. So
8 you don't know the original source of it, do
9 you?

10 A I'm not sure. I don't know that there
11 was ever an investigation done to find that out.

12 Q He testified that he shared that with
13 your Union president with out of concern for
14 your health and well-being?

15 A I'm not sure. There was a note
16 somewhere where there was a meeting between him
17 and it might have been Linke -- Trouba, Linke,
18 and maybe Merry- -- I don't remember where the
19 note was. It was either Linke's note or
20 Merryman's note where they were meeting to
21 discuss whether I could be disciplined for it.
22 And then no discipline -- they never disciplined
23 me or talked to me about discipline.

24 Q That was for being disciplined for
25 calling in sick, wasn't it?

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1 A Yes. Originally.

2 Q Okay. So just -- go back to my
3 original question. You did later accuse and
4 include in your lawsuit a claim that the City
5 violated your HIPAA rights as well; correct?

6 A Correct. A City employee was
7 disciplined for violating my HIPAA rights. So,
8 yes.

9 Q On a different note. When a former
10 girlfriend obtained a restraining order against
11 you alleging that you tried to harm her, you
12 claim that she lied about those events?

13 A This is what you talked to me about in
14 my deposition; correct?

15 Q Correct.

16 MR. CORRIGAN: What year would
17 this have been?

18 THE WITNESS: Like 2008 maybe.
19 Maybe 2- -- it was '07 or 2008.

20 Q (By Ms. Guttai) I'll find it here.

21 A It was before I was an employee at the
22 City of Lincoln.

23 Q 2009?

24 A 2009. Okay. We talked about it in my
25 deposition. I do remember that, yes.

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1 Q Okay. She obtained a restraining
2 order against you, didn't she?

3 A Yes.

4 Q Okay. She accused you of trying to
5 hit her with -- that you hit her with your car?

6 A Yes. And like I said in my
7 deposition, there was a car accident that
8 happened. There was a police report filed. We
9 both discussed it with the police. It was an
10 accident, and it took place before this had
11 happened. And there was an -- the police -- I
12 was never charged with anything or accused of
13 anything.

14 Q But you did -- there was a restraining
15 order against you; correct?

16 A Correct.

17 Q And in your deposition, you testified
18 that her allegations against you, you believe --
19 you're claiming that those were lies?

20 A I believe I pointed out several --
21 several instances in the document we went over
22 that I believe were dishonest. But if we're
23 going to -- do you have a transcript from my
24 deposition?

25 Q I do.

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1 A We can go line by line on things where
2 we can talk about it. But I can't remember
3 specifics of what we talked about at this point.

4 Q Okay. You claimed though -- and
5 you're still claiming -- that when she says you
6 hit her with the car after an argument, that
7 that was false?

8 A She was hit by a car, yes. I don't
9 believe it was following an argument, and it was
10 never intentional. It was a car accident.

11 Q Okay.

12 A So, yes, that -- that was intentional
13 in that it was -- and it -- intentionally to
14 harm her, that was incorrect.

15 Q She alleged a week after this
16 happened, you were willing to ruin her life.
17 Was that truthful, or is she -- is she telling
18 the truth there?

19 A No. No.

20 Q Okay.

21 A I had no reason to harm her ever.

22 Q And she says that when you're -- she
23 was sleeping, she -- you grabbed her hands and
24 head and began jerking her head up and down. Is
25 that true?

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1 A At some points. I can't even think of
2 specifics.
3 Q But that was okay in your mind?
4 A It didn't involve -- it didn't
5 negatively impact his working environment. So
6 there's a difference there.
7 Q But if you're talking negatively in
8 your lawsuit; correct?
9 A Of stating my experiences, I don't
10 believe -- I can state my experiences. Any
11 negative thing that -- in my lawsuit I believe
12 mostly has been -- like, I would have to look.
13 But those are all things that the City has
14 received evidence about, what my concerns are
15 about.
16 Q Your position is that he's not allowed
17 to state anything about him being a defendant?
18 A The issue with that communication was
19 that there was an investigation going on.
20 Q But you weren't even there, so you
21 don't know what was said, do you?
22 A Correct. And I stated that.
23 Q And Ms. Lundvall, when she reported it
24 to you, she told you she never heard your name
25 mentioned; correct?

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1 reason to refute that?
2 A No. I wasn't present for when she --
3 if she talked to the chief, I don't know if she
4 was -- I don't think she was interviewed. I
5 think she just sent an e-mail.
6 Q Have you seen that e-mail?
7 A I probably have. But --
8 Q Okay. And you stated in your
9 complaint that he was making defamatory comments
10 about you?
11 A That's what it says, yes.
12 Q Okay. Again, at this point you have
13 not -- you were not there? You've not heard it?
14 A Let's see. So what I said is the fact
15 that my co-workers are so blatant and
16 unrelenting in public in their defamatory
17 comments about me leads me to believe that they
18 have no respect at all for my rights to a
19 workplace that is free from harassment,
20 discrimination, and retaliation. This is
21 unacceptable.
22 Q So are you claiming that whatever he
23 said that you didn't hear at the ladder training
24 was defamatory?
25 A I'm saying that people are willing to

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1 A I believe Lundvall told me that she
2 knew exactly who he was talking about. They
3 didn't even need to state your name.
4 Q But she said she never heard your
5 name; correct?
6 A I don't recall it. It might be in the
7 e-mail.
8 Q Let's look at --
9 MS. GUTTAU: This will be Union
10 152.
11 THE WITNESS: Okay.
12 Q (By Ms. Guttau) Do you want to take a
13 moment to look at that?
14 A (Witness complies.) Okay.
15 Q Is that the e-mail you're talking
16 about, your complaint to Ms. Witte?
17 A Yes.
18 MS. GUTTAU: Okay. Let me find
19 just the statement real quick so we can
20 cross-reference here.
21 That's the one number I didn't
22 put down. I'll find it.
23 Q (By Ms. Guttau) If Ms. Lundvall's
24 report indicates that she's told the chief she
25 never heard your name stated, do you have any

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1 -- like -- exactly what I said here. The fact
2 that people are willing to believe -- be
3 unrelenting in public and defamatory comments
4 about me leads me to believe that they have no
5 respect for my rights.
6 Q Okay. But you made that complaint
7 only based on what Ms. Lundvall told you; right?
8 A This complaint is about Jesse Lundvall
9 calling me, yes.
10 Q Okay. And you -- the purpose of that
11 e-mail is because you wanted these -- you wanted
12 the public statements to stop about you?
13 A Yeah. I did not want the -- I didn't
14 want to be retaliated against. And I believed
15 that the statements were coming from Chad Roof's
16 -- partially because Chad Roof was angry that I
17 had reported him.
18 Q So you called in here -- in your
19 e-mail, you stated at approximately 11:48 I
20 received a call -- phone call from Jesse
21 Lundvall. This is about the ladder training;
22 correct?
23 A Yes.
24 Q So that would be 11:48 a.m. that day?
25 A Probably, yes.

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1 Q Okay. And you send this e-mail to Ms.
2 Witte at 12:24; correct?
3 A That's what it says.
4 Q So about thirty-six minutes later?
5 A Probably.
6 Q Okay. And you said -- the first line,
7 this e-mail is to follow up the information I
8 verbalized to you a few minutes ago. So you had
9 even reported it to her in less than thirty-six
10 minutes; correct?
11 A Probably. I think on this day
12 Aishah's office is right across the hallway.
13 And if we weren't on a call over the lunch
14 period or where we were eating, that I could run
15 over and talk to her real quick.
16 Q Okay. So thirty-six minutes after
17 hearing a rumor that Captain Mahler might be
18 talking about you, you submitted both a verbal
19 and a written complaint; correct?
20 A Correct. I believe though this was --
21 this was about -- and I verbalized this to
22 Aishah my concern that Chad Roof would involve
23 other people -- other people in the matter that
24 was being investigated. That's what --
25 Q So you believed it was very serious

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1 Jesse had told me, and then I believed that they
2 had asked her for an e-mail, but I don't
3 believe -- I wasn't interviewed and I don't
4 think she interviewed about it. I don't know
5 who was interviewed about it.
6 Q All the firefighters present confirmed
7 that that is not what happened, didn't they?
8 A I don't know that. I don't know who
9 all was interviewed. And Aishah Witte did not
10 take notes on many of those interviews, so I
11 have no idea.
12 Q If -- if all of the firefighters who
13 were present at the ladder training indicate
14 that Captain Mahler wasn't talking about you, do
15 you have any evidence to refute that?
16 A I'm sorry?
17 Q I said, if all of the firefighters
18 present at the ladder training confirmed that
19 Captain Mahler was not talking about you, do you
20 have any evidence to refute that?
21 A No. I don't know -- like I said, I
22 don't know who -- I don't know if they all were
23 talked to. I don't know who she talked to and
24 the content of those. So I have nothing to say
25 that it happened or didn't happen.

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1 and urgent?
2 A I just believed it needed to be
3 documented, and I had time at the moment.
4 Q Did you believe it was serious?
5 A Yes. I believed that I was tired
6 of -- I was tired of this happening.
7 Q Okay. Let's turn now to -- this would
8 be in the red book -- City Exhibit 19.
9 A (Witness complies.) Okay.
10 Q Do you want to turn to page 2,
11 paragraph 5?
12 A (Witness complies.) Okay.
13 Q And this is your affidavit filed with
14 the Court; correct?
15 A Yes.
16 Q Okay. You state, recently on April
17 22nd, 2021, I reported Mahler for retaliatory
18 behavior when he disparaged me to another
19 firefighter. And that's the e-mail you're
20 referring to in report to Aishah?
21 A Yes.
22 Q Even though you did not have any
23 evidence that that happened other than the rumor
24 that Ms. Lundvall told you?
25 A I just had -- like I said, just what

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1 Q Okay. But yet you included that
2 serious allegation in paragraph 5 in your
3 affidavit; correct?
4 A I included that because a witness told
5 me that -- that they witnessed that.
6 Q Okay. But the witness didn't tell you
7 that it was about you for sure?
8 A That is why the witness called me is
9 because she indicated the conversation was about
10 me. My conversation with Jesse Lundvall was not
11 very long. I reported what I heard, what she
12 told me. And then that ended up in the e-mail
13 and a verbal report to Aishah Witte.
14 So whether -- whether people disagreed
15 with that happening, that -- that has nothing to
16 do with whether I would report that or not.
17 That is just what was reported to me.
18 MS. GUTTAU: Do you need to take
19 a break?
20 (Recess at 11:30 a.m.)
21 (Resumed at 11:36 a.m.)
22 THE ARBITRATOR: Okay. Let's go.
23 Q (By Ms. Guttai) Okay. If you want to
24 turn to Exhibit 45.
25 MS. GUTTAU: City Exhibit 45.

<p style="text-align: right;">Page 1921</p> <p>1 Q (By Ms. Guttan) Turn to page 38.</p> <p>2 A (Witness complies.)</p> <p>3 Q Are you on page 38?</p> <p>4 A Yes.</p> <p>5 Q Okay. And this was the complaint</p> <p>6 language that Ms. Lundvall submitted. As you</p> <p>7 can see, she said, Chief Engler, below you will</p> <p>8 find my document and account of what took place</p> <p>9 at the CC training tower.</p> <p>10 At the bottom of that, Jesse wrote,</p> <p>11 Firefighter Benson asked me to document what</p> <p>12 happened as she needed to report what I was</p> <p>13 telling her. I informed her that Captain Mahler</p> <p>14 never mentioned her name. Is that true?</p> <p>15 A If you go on with that --</p> <p>16 Q I'm just asking about that first part.</p> <p>17 I'll ask you about the second part. Is that</p> <p>18 true?</p> <p>19 A That would -- yes. That's the first</p> <p>20 part of a sentence that she put in this e-mail,</p> <p>21 yes.</p> <p>22 Q My question is, did she tell you, when</p> <p>23 she called you, that Captain Mahler never</p> <p>24 mentioned your name?</p> <p>25 A I don't -- I don't remember. We've</p>	<p style="text-align: right;">Page 1922</p> <p>1 talked about this so many times. We've talked</p> <p>2 about this e-mail, my report. It -- it gets</p> <p>3 muddled.</p> <p>4 Q So you're not sure?</p> <p>5 A I can't remember if she told me that</p> <p>6 on the phone or if I read it in here or we</p> <p>7 talked about it later.</p> <p>8 The best document that I have to go</p> <p>9 off of what I knew at that point is what I put</p> <p>10 in an e-mail to Aishah Witte.</p> <p>11 Q You said the second part, however, by</p> <p>12 what he was saying, I knew who he was talking</p> <p>13 about. So you remember her telling that --</p> <p>14 telling you that?</p> <p>15 A What I -- I remember this because I</p> <p>16 have learned this. I don't remember specifics</p> <p>17 about that particular phone call.</p> <p>18 Q Okay. And even though nobody else</p> <p>19 confirmed that Captain Mahler was talking about</p> <p>20 you, you still included that in your affidavit</p> <p>21 to the Court requesting that he be removed from</p> <p>22 responding to fires; correct?</p> <p>23 A This was included in the report,</p> <p>24 because I believed that me reporting this issue,</p> <p>25 whether she mentioned his name or not, me</p>
<p style="text-align: right;">Page 1923</p> <p>1 reporting this happened just a couple of days</p> <p>2 before the warehouse fire. And he has a history</p> <p>3 of not speaking to people when he's angry and</p> <p>4 upset, especially me for reporting him, which is</p> <p>5 what I believed was retaliatory. That's why I</p> <p>6 believe his behavior at the warehouse fire was</p> <p>7 retaliatory, because he was mad that I reported</p> <p>8 him. That's why -- that's why this is included.</p> <p>9 Q But you stated that he -- that you</p> <p>10 reported him for retaliatory behavior when he</p> <p>11 disparaged me to another firefighter. So you're</p> <p>12 saying in your facts of your affidavit in</p> <p>13 Exhibit 19, which is your affidavit in support</p> <p>14 of motion for preliminary injunction; correct?</p> <p>15 A Are you saying my -- my affidavit is</p> <p>16 in support of preliminary -- what are you asking</p> <p>17 about that?</p> <p>18 Q Yeah. So you submitted your affidavit</p> <p>19 to support your motion for preliminary</p> <p>20 injunction; correct?</p> <p>21 A Correct.</p> <p>22 Q And that motion requested in part that</p> <p>23 Judge Kopf remove Captain Mahler from reporting</p> <p>24 to any further fires; correct?</p> <p>25 A I would have to look at the exact</p>	<p style="text-align: right;">Page 1924</p> <p>1 wording of it.</p> <p>2 Q Something to that effect?</p> <p>3 A Something along the lines of it needed</p> <p>4 to be investigated because, if I remember</p> <p>5 correctly, like it was a safety concern.</p> <p>6 Q Okay. Do you recall that it also</p> <p>7 requested that he be removed from service?</p> <p>8 A It may have. I would have to look at</p> <p>9 it.</p> <p>10 Q Okay. For clarity, let's just flip</p> <p>11 back. Let's look at Exhibit 46.</p> <p>12 A Okay.</p> <p>13 Q And you understand 46 is your motion</p> <p>14 for preliminary injunction?</p> <p>15 A Yes.</p> <p>16 Q Okay. If you want to turn to</p> <p>17 paragraph 8 on the second page.</p> <p>18 A (Witness complies.)</p> <p>19 Q And it says plaintiff. You understand</p> <p>20 that was you?</p> <p>21 A Yes.</p> <p>22 Q Respectfully requests that the Court</p> <p>23 order the City of Lincoln to immediately</p> <p>24 initiate disciplinary proceedings against</p> <p>25 Mahler; correct?</p>

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1 A That's what it says.
 2 Q And then also to enjoin Mahler from
 3 assignment or dispatch to any fire scene during
 4 the pendency of disciplinary proceedings. So
 5 you were asking that he not be allowed to
 6 respond to fire calls; correct?
 7 A Enjoined from any fire scene during
 8 the pendency of disciplinary proceedings. Okay.
 9 Q Correct?
 10 A Yeah, that's what it says, yeah.
 11 Q And then also to appoint the
 12 third-party independent investigator?
 13 A That's what it says.
 14 Q Okay. So what I'm asking is, your
 15 affidavit back on 19, you understood that
 16 Exhibit 19 you submitted that in support of your
 17 request to the Court to initiate discipline
 18 against him and enjoin him from responding to
 19 fires?
 20 A Which affidavit are you talking?
 21 Q Exhibit 19.
 22 A Okay. This is the motion that my
 23 lawyer wrote.
 24 Q Correct.
 25 A And then you're asking about my

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1 you're saying that he did disparage you;
 2 correct?
 3 A I reported -- okay. So my e-mail to
 4 Aishah Witte, I outlined what I was reporting
 5 him for. This No. 5 is me saying on April 22nd,
 6 this is what I reported.
 7 Q So you don't know whether or not he
 8 had disparaged you when you made the statement?
 9 A I know what the witness said to me,
 10 and that is what I reported.
 11 Q In paragraph 28 of that same
 12 affidavit, you state, Mahler refused to
 13 communicate with me at the warehouse fire
 14 because of this underlying litigation and recent
 15 complaints.
 16 A Hold on. Where are you at?
 17 Q I'm sorry. Exhibit 19.
 18 A Exhibit 19.
 19 Q Yeah. Paragraph 28.
 20 A 28. Okay.
 21 Q You state, Mahler refused to
 22 communicate with me at the warehouse fire
 23 because of this underlying litigation and recent
 24 complaints of retaliatory behavior.
 25 By the time you filed this, the

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1 affidavit then?
 2 Q Uh-huh.
 3 A Okay. What are you asking about this?
 4 Q Okay. So in photograph 5, what we're
 5 talking about, you said in your affidavit you
 6 reported Mahler for retaliatory behavior when he
 7 disparaged me to another firefighter. So you
 8 were stating that as fact in your affidavit in
 9 support of your motion; correct?
 10 A I'm stating that I reported Mahler for
 11 retaliatory behavior when he -- I'm stating that
 12 that's what I reported.
 13 Q But you're saying you reported it when
 14 he disparaged me to another firefighter;
 15 correct?
 16 A I reported Mahler -- yes.
 17 Q Okay. And that's my question. You're
 18 stating that as a fact in support of your
 19 request to the Court for a pretty serious --
 20 pretty serious request for orders against
 21 Mahler; correct?
 22 A This is a statement of what I
 23 reported.
 24 Q But you're also stating as a fact that
 25 you reported it when he disparaged you. So

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1 underlying litigation had been pending since
 2 2018, correct, for years?
 3 A Correct.
 4 Q You allege in your lawsuit that he
 5 retaliated against you before the warehouse
 6 fire; correct?
 7 A If -- if that's what it -- if that's
 8 what it says, then yes.
 9 Q Okay. And you've been in other fires
 10 with him since the filing of your lawsuit
 11 without incident; correct?
 12 A Yeah. We actually have worked
 13 numerous fires where I was a firefighter and
 14 where I was an acting officer where we
 15 communicated whether I was working underneath
 16 him or just communicated in passing on the
 17 fireground, and we had no issues. I had no
 18 issues.
 19 My issue was that this change in
 20 demeanor on the fireground happened immediately
 21 after I reported his behavior that was reported
 22 to me by Jesse Lundvall, which historically when
 23 I have reported something against him in the
 24 past, he refuses to speak to me. This time it
 25 was in a fire.

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1 So his previous ability to
2 communicate -- our previous ability to
3 communicate on a fireground shows that we can
4 communicate on a fireground. There -- this was
5 a change in expected behavior -- in my expected
6 behavior from him.

7 Q But you've made repeated allegations
8 of discrimination and retaliation against him,
9 haven't you?

10 A I've reported issues between him and I
11 were unprofessional and I believe retaliatory,
12 harassing, and discriminatory.

13 We've had numerous conversations,
14 communications -- sorry, conversations is the
15 right word. We've had numerous contacts while
16 executing medical calls, fire calls where we
17 professionally communicate with one another.

18 The issue with this incident is that
19 he refused to talk to me in a fire. So he's
20 talked to me numerous times since the beginning
21 of this lawsuit and since the no contact order.

22 The only issue right with this part it
23 was a couple of days after I had reported him
24 again.

25 Q But you've had other incidents after

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1 you have reported him at other fire scenes and
2 had no problems; correct?

3 A With Mahler?

4 Q Uh-huh.

5 A I'm not sure. I'm not sure how
6 frequently we worked scenes after this.

7 Q You responded -- no, I mean, before
8 this. So the filing of your lawsuit, you've
9 responded to fires with him 2018, 2019, 2020;
10 correct?

11 A Absolutely, yeah.

12 Q Okay.

13 A In order -- there were no issues.

14 Q And he knew at that time that he had a
15 lawsuit pending against him by you?

16 A Correct.

17 Q Okay.

18 A And he also knew at that time there
19 was a no contact or a limited contact order and
20 we still communicated professionally on scene
21 whether I was a subordinate or an officer.

22 Q Thirty-six minutes was the amount of
23 time to report a rumor that he may have been
24 talking about you. Yet you waited nearly a week
25 to report that you thought he had abandoned you,

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1 didn't you?

2 A I believe that I made report of my
3 concerns immediately at the fire and that night
4 and then over Kelly days still communicated with
5 my battalion chief about it.

6 Q Let me back up. I think you misheard
7 my question. You didn't accuse him of
8 abandoning you at a dangerous warehouse fire
9 until about a week after the fire occurred;
10 correct?

11 A I sent my formal complaint by e-mail
12 when I returned from Kelly days.

13 Q Okay. So that was May 5th?

14 A Kelly days are eight days long.

15 Q Okay.

16 A So my last day of work, I communicated
17 with battalion chief. At the fire and that
18 night, we communicated over Kelly days, and he
19 told me to send it on Wednesday.

20 Q Okay.

21 A Which is when we returned to work. So
22 I'm -- I'm kind of confused as to --

23 Q Right.

24 A What's -- what's the issue that
25 you're --

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1 Q So you -- you testified earlier that
2 you had spoken to Captain -- or Chief Faust
3 about confusion about assignments perhaps that
4 evening after the fire. My question is, you
5 didn't accuse Captain Mahler of abandoning you
6 in a dangerous warehouse fire, that wasn't
7 reported until your complaint, right, after --
8 towards the end of Kelly days?

9 A The first time I did a complaint was
10 Wednesday morning back. So my first day back.

11 Q That's May 5th?

12 A If that's what the e-mail -- the
13 e-mail would be my first day back. So that is
14 the first time I wrote a complaint and filed it.

15 Q Okay. And let's check the date
16 because I want to make sure I've got it right.

17 MR. CORRIGAN: We'll stipulate
18 that it was May 5th.

19 MS. GUTTAU: Thank you.

20 Q (By Ms. Guttau) So you didn't -- and
21 my question is, you did not report the
22 abandonment in a dangerous warehouse fire until
23 your complaint on May 5th; correct?

24 A That was the first time I had written
25 anything about it.

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1 Q Okay. That was the first time you
2 reported that aspect of your complaint?

3 A I don't remember the specifics of my
4 conversations with Curt Faust. I know that the
5 phone conversation that I had over Kelly days
6 led to me basically putting that e-mail
7 together. So it's quite possible that I
8 discussed that and my concerns with that. I
9 know that when I sent that email, he never told
10 me that there was anything in there that was
11 news to him or that was surprising to him. So I
12 would imagine if I had said something that was
13 completely out of -- out of the ballpark with
14 what he had already been communicating, he would
15 have said something to me. So it would be
16 speculating like when -- when we first talked
17 about it.

18 Q You certainly didn't complain that
19 your life had been placed in danger within
20 thirty-six minutes of it happening, did you?

21 A I believe -- no. We were still
22 fighting the fire so --

23 Q Or within thirty-six minutes of
24 returning to the station?

25 A These are two different scenarios.

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1 listened to this was right before my interview
2 with Torrey Gerdes. I listened to the radio
3 traffic numerous times throughout her interview.
4 I don't recall exactly when I first heard
5 certain things.

6 What I do know is that I was looking
7 for Mahler when I left the building.

8 Q Okay.

9 A So I would assume that I knew he was
10 assigned to ventilation.

11 Q If you testified on direct that you
12 did not remember if you heard the initial Truck
13 8 to the ventilation assignment at the time, is
14 that still correct?

15 A I believe -- are we talking about my
16 deposition?

17 Q No.

18 A To here?

19 Q Uh-huh.

20 A When did I -- which time are you
21 talking about?

22 Q When Mr. Corrigan began asking you
23 questions.

24 A If I first heard Mahler -- like Truck
25 8 get assigned to ventilation?

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1 Q Would you agree that --

2 A So --

3 Q -- being an accusation of -- of your
4 life being threatened is more serious than a
5 rumor that somebody is talking about your
6 lawsuit?

7 A I think time is needed to process
8 what -- what you -- what you went through, what
9 you experienced. And the entire call needs to
10 be processed. And that is the difference
11 between the warehouse incident and me reporting
12 what somebody said to me verbatim.

13 Q Let's talk about the warehouse fire.
14 You testified you did not remember if you heard
15 the initial Truck 8 to ventilation assignment;
16 is that correct? That's what I have down in my
17 notes.

18 A I did not hear the initial what?

19 Q Initial Truck 8 to ventilation
20 assignment.

21 A I don't remember. No. When Truck 8
22 was originally assigned ventilation, is that
23 what you're talking about?

24 Q Correct.

25 A I don't -- so the first time I

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1 Q Uh-huh.

2 A I don't remember when I first heard
3 it. But I would assume that if I left the
4 building looking for Truck 8, there was a reason
5 I was looking for Truck 8.

6 Q I guess my point is, is it fair to say
7 that as a captain or firefighter, you don't hear
8 everything that is said on the radio, do you?

9 A Yeah. No. I don't think you can.

10 Q Okay. And Captain Wright testified to
11 that same thing; correct?

12 A Okay.

13 Q Do you recall that?

14 A I don't -- if you say that he did,
15 then --

16 Q Okay.

17 A -- it would make sense.

18 Q And if Mahler testified that he did
19 not hear assist with ventilation message, you
20 don't have any reason to dispute that, do you?

21 A No.

22 Q And both you and Captain Mahler, I
23 believe he stated, having some hearing deficits;
24 correct?

25 A I'm sorry?

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1 Q Both you and Captain Mahler have
2 hearing deficits?
3 A Correct.
4 Q Okay.
5 A I don't know his -- I just speak for
6 my own.
7 Q Okay. Is it possible you did not hear
8 him say, when you first met up with him, to
9 contact incident command if you need an
10 assignment?
11 A I didn't -- I didn't see -- I didn't
12 -- I mean, it's always possible that you don't
13 hear things. I -- the communication was so
14 clipped between us, I -- I think I would have
15 stopped -- I think I would have stopped to try
16 to hear what he said or ask for clarification.
17 But I do not recall there being anything else
18 said at that moment.
19 Q But it's possible that you guys didn't
20 hear things, each other's side; correct?
21 A Sure.
22 Q Okay. At the time Mahler arrived, he
23 had a job to do; correct?
24 A I'm assuming so, yeah. I don't know
25 when he got his first assignment. I don't

Page 1938

1 remember.
2 Q You had been in and out of the
3 warehouse at least once already before he
4 arrived?
5 A In and out, yes.
6 Q Okay. And I know during your
7 deposition there was some clarification that you
8 actually were in and out three times total, kind
9 of a second time was just a small in and out.
10 Do you recall that?
11 A Yeah. We just -- we just dipped into
12 the door and then walked along the wall a short
13 distance to make sure that the overhead was
14 clear. Some people might not call that entry.
15 Some people do.
16 It was -- we didn't -- we didn't
17 really breach the wall. We stayed onto the wall
18 when we walked.
19 Q On the interior of the building?
20 A Yes.
21 Q Okay. So the first time you went in
22 with your crew -- this is before Captain Mahler
23 had been in there -- you do what you need to do.
24 And then why did you exit that first time?
25 A We got a new assignment.

Page 1939

1 Q Okay. What was that?
2 A To assist with ventilation.
3 Q Okay. So the second time that you
4 said was just in along the wall. Who was with
5 you?
6 A I can't really remember exactly. I'm
7 pretty sure Morgan Hurley was.
8 Q Okay.
9 A I don't recall. I remember her being
10 like right behind me, but I don't remember if
11 Matt Roberts was there or not.
12 Q Okay. And this is before Captain
13 Mahler had gone with this crew?
14 A Before we all?
15 Q Yes.
16 A Yes. This was -- this was right after
17 I met him at the A/B corner. We went back and
18 then we went in that door real quick and went
19 along the wall and then came right back out.
20 Q So when you exited the first time, you
21 didn't have any trouble exiting, did you?
22 A We followed a hose line out the first
23 time. Then we were able to follow the hose line
24 out without any problems.
25 Q And as Matt Roberts testified, that

Page 1940

1 was at his suggestion, wasn't it?
2 A I don't recall at this point.
3 Q Is that possible?
4 A Sure. Yeah.
5 Q And you didn't have any trouble going
6 out at that time?
7 A No.
8 Q Okay.
9 A All --
10 Q I'm sorry.
11 A No. Like I said, we followed the hose
12 line out.
13 Q And you could -- Roberts and Hurley
14 both testified that you could see the doorways.
15 Do you dispute that?
16 A At which point?
17 Q The first time you exited.
18 A You cannot -- so like Mahler testified
19 and like Mike Wright testified, it depended on
20 where you were at. If you were close to the
21 trash compactor, the visibility was worse. So
22 you could walk along that hose line or walks
23 toward that door. And at some point you were
24 close enough to it where you absolutely could
25 see the outline of the door.

Page 1945

1 asked, yeah, if they needed -- I believe I said
 2 something along the lines if they needed us to
 3 assist with ventilation.
 4 Q Back on the conditions in the
 5 building. The first time you were in there you
 6 claim you saw skylights at the top of the
 7 building in the warehouse; correct?
 8 A I don't -- I honestly don't remember.
 9 I remember Matt Roberts saying something about
 10 skylights. I don't remember specifics.
 11 Q So you -- you don't recall seeing them
 12 yourself?
 13 A I don't -- I don't remember. I mean,
 14 that was -- I might have -- I might have
 15 remembered better closer to the fire. But I
 16 don't -- at this time don't remember.
 17 Q Captain Mahler told you, outside of
 18 the building of the fire, that he was going to
 19 open an overhead door; correct?
 20 A Truck 8 was going to open, something
 21 along those lines.
 22 Q So he told you what needed to be done;
 23 correct?
 24 A I think -- I took that as him just
 25 saying like this is first step of ventilation.

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1 the scene interior than he did; correct?
 2 THE REPORTER: I'm sorry. I just
 3 went blank.
 4 MS. GUTTAU: No problem.
 5 Q (By Ms. Gutttau) You had more
 6 knowledge of the scene than he did because you
 7 had been interior already; correct?
 8 A I -- yeah. I mean, just of like smoke
 9 conditions and kind of where the fire was.
 10 But --
 11 Q And those are significant things to
 12 observe?
 13 A Yeah.
 14 Q Right?
 15 A Absolutely.
 16 Q Okay. So fair you went in and
 17 assessed it when you first entered; correct?
 18 A Yes.
 19 Q And fair that he would do the same?
 20 A Everybody -- everybody is different.
 21 Sometimes officers, when they get assigned
 22 ventilation, don't have the ability to look
 23 inside.
 24 Q Okay.
 25 A They just kind of go off of radio

Page 1946

1 That was my interpretation.
 2 Q Okay.
 3 A We're going to open this door or these
 4 doors. Something along those lines.
 5 Q And you reported to Commander Faust
 6 that you had contact with him on the Charlie
 7 side. That's not disputed?
 8 A The -- the Alpha/Bravo corner?
 9 Q Yeah.
 10 A Yeah. The Alpha/Bravo corner is when
 11 he told me that, yeah.
 12 Q Okay. And he had said something about
 13 opening doors?
 14 A Yeah. Something along those lines.
 15 Q Okay.
 16 A I wrote it down. It's in one of those
 17 e-mails.
 18 Q By this time he's still not entered,
 19 but you've been in there twice in the warehouse?
 20 A No. Just once.
 21 Q Okay. When did you go in along the
 22 wall? After this?
 23 A Yes. I went in along the wall to see
 24 if the overhead was clear behind the doors.
 25 Q Okay. So you had more knowledge of

Page 1948

1 reports or what they're observing conditions
 2 from the outside. So it's very regular that an
 3 officer, like let's say that is doing
 4 ventilation from the roof, it's very normal for
 5 them not to go inside, never, and to see the
 6 smoke conditions on the inside of the fire or
 7 the fire conditions. They just start
 8 implementing their plan based on what they're
 9 seeing. It's a strategy.
 10 So he could be doing -- like Shawn
 11 Mahler, for example, could come up to a house.
 12 He might not need to see the inside of that fire
 13 to know where he wants to put the hole in -- in
 14 the roof, because he can read where the smoke is
 15 coming out. He can read things from the
 16 outside. So we don't always have the luxury of
 17 going in and looking. So I mean --
 18 Q Let me specify. So at this warehouse
 19 though, you said you went in and you observed
 20 smoke conditions where the fire was and you're a
 21 truck captain; correct?
 22 A Yes.
 23 Q Okay. So my question is, fair that
 24 Captain Mahler would need time to, if he wanted,
 25 to go in and assess the conditions just like you

Page 1949

1 did?

2 A Yeah. You kind of always run like a

3 constant assessment throughout it. So he --

4 yeah. If he wants to look at it, I'm sure

5 that's fine.

6 Q Okay. So the radio, you knew how to

7 ask for an assignment from incident command if

8 you weren't getting a response from Captain

9 Mahler; correct?

10 A One more time.

11 Q On the radio, you knew how to ask for

12 an assignment from incident command if you

13 weren't getting a response from Captain Mahler

14 or anybody else; right?

15 A Did I know how to do that?

16 Q Yeah.

17 A To just use the radio?

18 Q Yeah. And to ask for an assignment if

19 you're unsure?

20 A Yeah. You could do that. I wasn't --

21 I wasn't -- I didn't feel as though I was sure

22 of my assignment. So -- but, yeah, you could

23 always contact command if you need to.

24 Q If you weren't getting a response from

25 Captain Mahler, you knew how to ask incident

Page 1951

1 that you weren't as concerned with air levels,

2 you told the chief that, because you did not

3 believe you would be operating extensively

4 inside; is that true?

5 A Yeah. Yes. Sorry.

6 Q There is no LFR management policy that

7 says the words "assist with" that makes someone

8 a group supervisor, is there?

9 A I don't believe that there's -- I

10 don't believe that that's -- it's normal

11 terminology used with LFR, but I don't think

12 that there's anything that specifically outline

13 what that means. So I don't know -- I don't

14 know if there isn't anything that says that. As

15 well as I don't know if there's anything that

16 does.

17 Q Okay. If you want to turn to --

18 MS. GUTTAU: Can I pause a

19 moment? What time would you like to take a

20 lunch break, sir?

21 THE ARBITRATOR: Whenever you

22 guys want.

23 MS. GUTTAU: Okay. It's up to

24 you guys. If you want to take one.

25 THE ARBITRATOR: Let me ask you.

Page 1950

1 command; correct?

2 A I could. But I could also -- if I'm

3 close to somebody, I can continue to keep trying

4 to communicate with them in order to keep it off

5 the radio if it's not necessary.

6 Q Why did you leave the warehouse the

7 second big time? I guess not the time you went

8 in along the wall but the last time?

9 A Matt Roberts' low air level.

10 Q And you didn't have any problem

11 exiting at that time, did you?

12 A No. We -- I think we followed the

13 hose line for a little bit. And then once you

14 got far away from the trash compactor, you could

15 see the door. And I believe -- yeah. I can't

16 remember exactly what distance I said that was

17 to Torrey Gerdes. But I guessed just a little

18 walk from the trash compactor and then you could

19 see the doors, and then you could walk out, and

20 you didn't have to follow the hose lines.

21 Q You didn't have to crawl out? You

22 could just walk, you said?

23 A Yeah. Just walked.

24 Q Okay. And in your pre-disciplinary

25 meeting, and we can turn to it, you had stated

Page 1952

1 What else do we have today?

2 MS. GUTTAU: I think just

3 Mr. Schunk. I think just one more witness,

4 pretty short.

5 THE ARBITRATOR: Okay.

6 MS. GUTTAU: I mean, I'm kind of

7 at a stopping point, if you want. And then I

8 could finish the last half, hopefully less than

9 half.

10 THE ARBITRATOR: All right.

11 MS. GUTTAU: Or I can keep going.

12 THE ARBITRATOR: Let's stop. If

13 you're at a good point to stop, then we will

14 stop now.

15 MS. GUTTAU: Okay.

16 THE ARBITRATOR: How much time do

17 you guys want for lunch today?

18 MR. CORRIGAN: Thirty minutes.

19 MS. GUTTAU: Thirty. Would

20 thirty work?

21 THE ARBITRATOR: No.

22 MS. GUTTAU: Forty? Would

23 forty --

24 THE ARBITRATOR: I've got a

25 couple of things to do.

Page 1989

1 out?

2 A They were doing tasks that weren't
3 towards ventilation.

4 Q Uh-huh.

5 A Which is why I was asking Trent where
6 Mahler was and what's going on. But Trent was
7 climbing -- climbing up the -- the -- a ramp to
8 a compactor. And he yelled at one point for me
9 to hand him -- he handed me his halogen tool and
10 asked me -- he said he needed a hose, and I
11 helped facilitate getting the hose.

12 But shortly after that, Roberts --
13 Roberts' low air went off, so we just left.

14 Q And you were in there about a total of
15 ten minutes at the same time as Captain Mahler
16 was; correct?

17 A I do not know.

18 Q Okay. If that's what the record
19 shows, do you have any reason to dispute that?

20 A Are you talking about the time stamps?

21 Q Yes.

22 A Because I know like when we talked
23 about time stamps, we were unable to really
24 determine when the clock started when Truck 8
25 and Truck 1 went interior together, because

Page 1990

1 neither of us -- if I remember correctly,
2 notified command that we were walking inside.

3 So I think it's kind of open-ended.

4 We don't really know how long -- as far as I
5 know, we don't really know how long we were in
6 there together. More of people speculating it
7 was five minutes or it was fifteen minutes,
8 which is really subjective. Time and distance
9 both are really subjective in a fire.

10 Q If the record indicates it was around
11 ten minutes, do you have any records to refute
12 that?

13 A What -- I guess I'm saying what --
14 what -- what's the record that says that? Are
15 you talking about a statement?

16 Q I'm talking about time stamps.

17 A So what I'm saying is that neither
18 Truck 1 or Truck 8 made radio announcements that
19 we were entering the building together. So
20 there's no way to determine how long that chunk
21 of time was that we were in there together.

22 Q Do you know how long you were in
23 there?

24 A I don't know. It's all speculative.

25 Q Okay.

Page 1991

1 A That's why I'm saying I don't
2 understand how the record could state that.

3 Q You said you couldn't find him. But
4 Captain Mahler wasn't required to stay by your
5 side, was he?

6 A I'm sorry?

7 Q You stated you couldn't find him at
8 some point during the fire. So you were asking
9 Borchers. But Captain Mahler wasn't required to
10 stay by your side, was he?

11 A I don't know if there are requirements
12 like that. I believe -- I had the expectation
13 that he communicated with me so I knew what was
14 going on.

15 Q My question is, do you know of any
16 requirements requiring him to stay by your side?

17 A I don't think there's any requirements
18 for anybody to -- I don't think that's a
19 requirement that's normal on a fireground.

20 Q And his crew didn't even know where he
21 was for some portion of the time; correct?

22 A Correct.

23 Q Do you believe he abandoned them as
24 well?

25 A No, I don't. I assume that he had

Page 1992

1 communications with them and they kind of knew
2 what was going on.

3 Q How many times did you approach Mahler
4 on the inside to ask him?

5 A I'm not sure. Several.

6 Q Several as in three, or do you have
7 any way to estimate?

8 A Numerous times.

9 Q Okay.

10 A We had a walking commentary. So as we
11 walked, I tried to communicate with him by his
12 side. I can't determine when one of those
13 contacts becomes another one.

14 Q And part of the time you're inside
15 though. You couldn't find him, so you weren't
16 talking to him, of course, then; correct?

17 A Correct.

18 Q Okay. What exactly about his failure
19 to communicate at this fire do you claim could
20 have killed you here, if that's what you're
21 claiming?

22 A So failure to communicate is one of
23 the leading causes of firefighter death. So not
24 outlining a game plan for ventilation, for
25 example. That can lead to an unintended fire

Page 1993

1 event. It could be dangerous for everybody on
2 the fireground. If there's essential
3 communication such as what the vent strategy is
4 between two rigs who are trying to execute
5 ventilation, that can create a whole bunch of
6 issues.

7 And failing to communicate in general
8 on a fireground means that I don't have
9 confirmation of my assignment from him.
10 Regardless of whether you say that he can give
11 me one or not, I had the right and a reasonable
12 expectation to at least be told that he believed
13 I was confused or to open up that dialogue so
14 that we could figure out what was going on or
15 for him to make sure if he had said, contact
16 Battalion 1 for assignment, and I just didn't
17 hear him.

18 My continued attempts to communicate
19 with him would indicate that I didn't catch that
20 transmission. And at that point, it's still
21 important to say, hold on. Contact incident
22 command. You're confused.

23 Because when you knowingly have
24 somebody who -- who you know they are confused
25 in a fireground and they are coming to you with

Page 1994

1 -- whether it's wrong or right -- the idea or
2 impression that they were responding to you and
3 you ignore them because you think it's not your
4 problem or you don't like them or whatever
5 reason and you walk away, that person, one,
6 confusion, disorientation in a fireground is
7 incredibly dangerous and it leads death. But,
8 two, somebody could be having a medical
9 emergency.

10 Any number of things could be causing
11 disorientation or confusion on a fireground.
12 And if you just walk away from somebody who is
13 obviously confused or has a different
14 understanding than you are, then that absolutely
15 can result in death and absolutely is your
16 responsibility.

17 Q Okay. And I wasn't asking about
18 potential. So let me clarify. What exactly
19 about Captain Mahler's failure to communicate at
20 this particular fire where everybody else on
21 your crew and his crew said they had no safety
22 concerns could have killed you?

23 A I had safety concerns, which I
24 outlined in my report. And like I said, failing
25 to communicate can lead to disorientation. This

Page 1995

1 can lead to a number of issues or situations.

2 Situational awareness that is not
3 fully grasped by another individual, that could
4 essentially be remedied by communication. Those
5 things can all lead to a dangerous situation and
6 firefighter death and firefighter injury. It's
7 well-documented.

8 Q Could have potentially is what you're
9 saying?

10 A Which is what -- which is what I
11 have -- I have said -- what I've said since the
12 beginning. This could result in this situation.
13 This could result in these things happening.

14 Q But you did allege he abandoned you in
15 a dangerous warehouse fire, in this particular
16 fire; correct?

17 A Correct.

18 Q You also stated you were -- were your
19 questions to him just about what your assignment
20 was? Is that what you were asking him?

21 A I don't recall. I -- I said -- I
22 asked what the game plan was. Reiterated
23 Truck 1 is assigned to assist. Asked what --
24 what -- what they want us to do. What he wants
25 us to do. And like I said, I documented all --

Page 1996

1 all of the things that I reported. Closer to
2 the time of the fire and talked about them with
3 Torrey Gerdes.

4 Q How does Captain Mahler not giving you
5 an assignment equate to abandoning you?

6 A I didn't say he just didn't give me an
7 assignment. I said he refused to talk to me in
8 the interior of the fire. So I perceive that as
9 abandonment because I have the expectation and
10 I'm under the impression that he's my supervisor
11 at that point and he's refusing to talk to me.

12 At no point until I listen to that
13 radio traffic with Torrey Gerdes did I learn
14 that the actual word "group supervisor" was not
15 used. I was not aware of any of this
16 beforehand.

17 And nobody told me that I was
18 misunderstanding incident command or that I was
19 misstating or misrepresenting anything. And
20 there was ample opportunity for someone to come
21 to me and say, hey, you've got this wrong or you
22 were off on this. Nobody ever came to me to say
23 that.

24 So when I'm -- when we're talking
25 about the potential and what I said and what my

Page 1997

1 expectations for communications were --

2 Q So you weren't aware that the words
3 "group supervisor" weren't used until you
4 listened to it with Torrey Gerdes?

5 A Yeah. It's probably around the time.
6 See, I never listened to the radio traffic at
7 all until -- until it was given to me by Torrey
8 Gerdes, which was months later, I think.

9 Q As a captain though, you have access
10 to any of the recordings of any fire scene;
11 correct?

12 A I don't think so.

13 Q If that is the policy, do you have any
14 evidence to dispute that?

15 A I have never heard -- no one has ever
16 told me how you can get ahold of these things.
17 I was given radio traffic one time, but it was
18 not a normal thing. And I did not know how to
19 go about doing that nor did I ever expect that
20 this would be needled down to such a specific
21 thing instead of focusing on the failure to
22 communicate, which was my concern. So I at --
23 at no point until after my Torrey Gerdes
24 interview was I even aware that my terminology
25 of using "group supervisor" was even coming into

Page 1998

1 question.

2 Q So even though you weren't aware or
3 weren't sure that was the right terminology, you
4 still put it in your affidavit to the court
5 seeking to have Captain Mahler removed from his
6 position?

7 A That's not what I just said.

8 Q But you did put it your affidavit?

9 A Hold on. What you just said before
10 that, restate that, would you?

11 Q So you said you hadn't -- you weren't
12 aware until you listened to the reporting with
13 Torrey Gerdes that the words "group supervisor"
14 were not used?

15 A Correct.

16 Q Okay. But you put in your affidavit
17 that that was a fact that he was your group
18 supervisor?

19 A Correct. Because of what I had
20 testified to just a little bit ago. There can
21 only be one person in charge of ventilation --
22 of ventilation assignment. So that person would
23 be the group supervisor in my understanding.

24 Q So then why was it significant to you
25 that you -- when you listened to the recording,

Page 1999

1 that was the first time you learned those words
2 were never used?

3 A Because Torrey Gerdes brought it up to
4 me.

5 Q But if those words don't matter, why
6 is it significant to you?

7 A Because they still don't matter. And
8 it was significant to me because at that point I
9 realized that the focus was not even on my
10 safety concern. The focus was on whether or not
11 I used terminology that they agreed with.

12 Q Okay. You said you didn't realize
13 they would be needling this down. But I mean,
14 you publicly alleged that Captain Mahler had
15 abandoned you and you didn't have to publicly do
16 that, did you?

17 A Well, I reported it. And it wasn't
18 investigated. And then I felt as though my
19 safety was not being taken seriously. And I
20 felt that City Legal was controlling whether or
21 not the department actually investigated what my
22 safety concerns were. And so at that point my
23 attorney notified City Legal that there were
24 these concerns and notified City Legal that --
25 that an injunction would be filed after so much

Page 2000

1 time if things had not been addressed. And that
2 resulted in the injunction being filed.

3 So if -- if you ignore my safety
4 concerns, I have every right to ring to
5 continuously the bell if I believe my safety is
6 at risk and I believe behaviors will continue
7 and just escalate and escalate.

8 And so by ringing the bell, that was
9 just another avenue. When I filed an injunction
10 or my attorney filed an injunction on my behalf
11 or however that works, I was running out of
12 options to be heard.

13 Q But you had just filed a grievance a
14 day or two before that; correct?

15 A I believe -- so I can't remember the
16 exact timeline. But I remember the City being
17 notified that an injunction would -- would
18 follow if it wasn't looked into.

19 Q Okay. Let's look at your grievance
20 real quick so we've got the timeline down.

21 A And those are two separate things
22 also. The grievance and the injunction are not
23 related.

24 Q You asked for an independent
25 investigator in both of them, didn't you?

Page 2013

1 why didn't you express your concern that you
2 were abandoned in the structure, you said, I did
3 not discuss that concern with Faust until Kelly
4 days. Would that be accurate that you not
5 discuss that with him until Kelly days?

6 A I'm not -- this is based on me not
7 remembering exactly what I said to him at the
8 battalion car. So I'm not sure when that --
9 that would have been first reported to Curt.

10 Q Okay. And as we sit here today, do
11 you have any reason to dispute what you
12 testified then?

13 MR. CORRIGAN: Can we just
14 clarify that what you're reading from is the
15 transcript of the pre-disciplinary hearing from
16 October 12th of '21?

17 MS. GUTTAU: Correct. Yeah.

18 MR. CORRIGAN: All right.

19 THE WITNESS: Okay. Go again.

20 Q (By Ms. Gutttau) As we sit here today,
21 are you changing that timeline, or do you
22 believe that to still be accurate?

23 A No. I'm saying right here is when I
24 said I did not discuss that concern with Faust,
25 I did not remember specifically what was spoken

Page 2014

1 to him at the battalion car at the time. So I
2 did not report that as an official time as I
3 reported that Mahler was not speaking to me.

4 After the course of the depositions
5 and the arbitration, when Curt testified that
6 that conversation did happen and shed some more
7 light on it, then I was able to recall better.

8 Q But he didn't say that abandonment was
9 discussed?

10 A I don't know -- I don't remember what
11 he said. Do you have the transcript of that?

12 Q I do. But do you recall?

13 A I -- I don't recall at this time.

14 Q Okay. You testified in your direct
15 that Chief Faust would regularly come up to you,
16 just in general, to make sure Captain Mahler's
17 communications with you were appropriate. Do
18 you recall that?

19 A Yes.

20 Q So fair to say if that's on the
21 forefront of Chief Faust's minds -- mind, it
22 would be on the forefront of Captain Mahler's
23 mind to make sure he was complying with orders
24 and communicating appropriately?

25 A I don't think Chief Faust's concerns

Page 2015

1 had anything to do with a no contact order. I
2 think Chief Faust's concerns as he relayed them
3 to me were that I felt like that there was
4 adequate communications to stay safe on the
5 fireground.

6 I can't speculate as to what was on
7 the forefront of Shawn Mahler's mind. I do know
8 that I never heard anything about this no
9 contact order until we were addressing -- or I
10 was attempting to address the failure to
11 communicate.

12 If there was a concern with
13 communication with -- between Shawn Mahler and I
14 on the fireground before this, it should have
15 been addressed right away. I don't -- I do not
16 believe that -- it is my opinion, I do not
17 believe that he was worried about this.

18 I believe it was a convenient excuse
19 to excuse failing to communicate with me on a
20 fireground.

21 Q That's your belief?

22 A That's -- that's my -- that's my
23 suspicion.

24 Q If your crew's lives were in danger,
25 you had a responsibility to tell them; correct?

Page 2016

1 A That's kind of a vague question. I
2 think it depends on the situation. I think in
3 the triage process, we problem-solve first and
4 then communicate.

5 If -- if -- in this particular
6 situation, if I would not have been able to
7 orient, I believe it's important to communicate
8 with the crew.

9 However, while I'm problem-solving, if
10 I can fix it, there's no need for me to bring
11 anybody into the fold on that.

12 Q But if you're going to put in a public
13 federal court filing that it wasn't just you but
14 also your crew whose lives were placed in
15 danger, fair to say you should have notified
16 them that their lives had been in danger?

17 A I stand by what I just said.

18 Q So I want to -- do you recall
19 approximately what time of day the fire --
20 warehouse fire was?

21 A I don't -- I don't recall. It was
22 before lunch, I believe.

23 Q Okay. If the time stamps show about
24 eleven -- or the articles, does that sound about
25 right, 11 a.m.?

<p style="text-align: right;">Page 2017</p> <p>1 A Sure.</p> <p>2 MS. GUTTAU: Do you want to take</p> <p>3 a break?</p> <p>4 MR. CORRIGAN: Yeah.</p> <p>5 MS. GUTTAU: We can take a break.</p> <p>6 I saw John eyeing the clock, so we better take a</p> <p>7 break.</p> <p>8 THE ARBITRATOR: How much time do</p> <p>9 you need?</p> <p>10 MS. GUTTAU: Ten minutes.</p> <p>11 MR. CORRIGAN: Ten minutes.</p> <p>12 (Recess at 2:00 p.m.)</p> <p>13 (Resumed at 2:10 p.m.)</p> <p>14 THE ARBITRATOR: Ready?</p> <p>15 MS. GUTTAU: Yeah. Sure are.</p> <p>16 THE ARBITRATOR: All right. Hit</p> <p>17 it.</p> <p>18 MS. GUTTAU: Okay.</p> <p>19 Q (By Ms. Guttau) If you want to turn</p> <p>20 to Exhibit 45 of the City's exhibits. I'll have</p> <p>21 you flip back to page 55.</p> <p>22 A (Witness complies.)</p> <p>23 (An off-the-record discussion was had.)</p> <p>24 Q (By Ms. Guttau) All right. So</p> <p>25 looking at Exhibit 45, page 55, at the -- at the</p>	<p style="text-align: right;">Page 2018</p> <p>1 bottom of this, is this -- the bottom part has</p> <p>2 an e-mail that goes onto the next page. Is that</p> <p>3 an e-mail that Ms. Witte sent you on April 26th</p> <p>4 around 9:17?</p> <p>5 A It appears so, yes.</p> <p>6 Q Okay. And then it looks like -- I</p> <p>7 assume that's 9:17 in the morning because your</p> <p>8 response is above at 3:54 p.m.; is that correct?</p> <p>9 A It appears so, yes.</p> <p>10 Q So in the bottom e-mail, she is</p> <p>11 informing you about causing the retaliation</p> <p>12 investigation pending the Lundvall</p> <p>13 investigation. And then in the second</p> <p>14 paragraph, she says, as a side note on the</p> <p>15 Mahler matter you reported last week, was that</p> <p>16 the ladder training?</p> <p>17 A Most likely.</p> <p>18 Q Okay. The chief had -- Battalion</p> <p>19 Chief immediately contacted Captain Mahler and</p> <p>20 plans to do some follow-up with identifying</p> <p>21 parties today as well. Then she says, please</p> <p>22 just let me know if you have any questions or</p> <p>23 concerns; correct?</p> <p>24 A Okay.</p> <p>25 Q Okay. And then you e-mail back at</p>
<p style="text-align: right;">Page 2019</p> <p>1 3:53 this afternoon -- that afternoon. And so</p> <p>2 this is presumably shortly after you got back to</p> <p>3 the station from the fire; correct?</p> <p>4 A Could be. I'm not sure.</p> <p>5 Q If the fire -- if the records indicate</p> <p>6 that that happened at about eleven and you're</p> <p>7 e-mailing her at 3:54, would you have been back</p> <p>8 to the station by then?</p> <p>9 A If I'm e-mailing, I would assume so.</p> <p>10 Q Okay. And so she sends you the</p> <p>11 morning e-mail. You go to the fire that's --</p> <p>12 that's the subject of this claim that Captain</p> <p>13 Mahler abandoned you; correct?</p> <p>14 A Correct.</p> <p>15 Q Okay. And then at 3:54, so probably</p> <p>16 within hours of you returning from that fire,</p> <p>17 you respond to Aishah and you say, thank you for</p> <p>18 reaching out and keeping me updated on the</p> <p>19 process. And thank you for updating me on the</p> <p>20 Mahler issue; correct?</p> <p>21 A Yes. That's what it says.</p> <p>22 Q Okay. And then you go on to talk</p> <p>23 about, you know, retaliation needs to stop, that</p> <p>24 type of thing. But you never mention that</p> <p>25 Captain Mahler had just refused to talk to you</p>	<p style="text-align: right;">Page 2020</p> <p>1 or abandoned you in a dangerous warehouse fire</p> <p>2 just hours before, do you?</p> <p>3 A No. I don't -- I don't put that in</p> <p>4 here, no.</p> <p>5 Q Even though that's the very -- she's</p> <p>6 e-mailing you about the very complaint that you</p> <p>7 claimed he retaliated against you; correct?</p> <p>8 A Yeah. And this is something that I</p> <p>9 communicated with Chief Faust that evening about</p> <p>10 -- and this is something that I continuously</p> <p>11 communicated with him about. I don't think I</p> <p>12 had even unpacked it. And this was about --</p> <p>13 this was a response to an e-mail. I don't think</p> <p>14 it is -- I don't think I would have put it in</p> <p>15 here. I don't think I would have reported it to</p> <p>16 anybody outside of any communication with Faust</p> <p>17 until I continued to communicate about it with</p> <p>18 Faust.</p> <p>19 Q So even at the end of your second</p> <p>20 paragraph, you say, why is it that Captain</p> <p>21 Mahler is able to repeatedly engage in this</p> <p>22 behavior without being disciplined. Above that,</p> <p>23 you're referring to the ladder training. You</p> <p>24 include that statement, but you don't mention</p> <p>25 that he allegedly had just done to you within</p>

<p style="text-align: right;">Page 2021</p> <p>1 hours before?</p> <p>2 A This is talking about the ladder</p> <p>3 training. We're not talking about the warehouse</p> <p>4 fire in this. So this would just be ladder</p> <p>5 completion training.</p> <p>6 Q But if that was that serious, as you</p> <p>7 have since complained, it would certainly make</p> <p>8 sense you would report that to Aishah when you</p> <p>9 were discussing Captain Mahler, wouldn't it?</p> <p>10 A Not necessarily. I would report it</p> <p>11 after I understood it completely and</p> <p>12 communicated with my superior officer about it.</p> <p>13 And also, yeah, it was probably -- I mean, I</p> <p>14 don't -- if I remember correctly, I don't think</p> <p>15 Curt even got back to the station until late</p> <p>16 that night. My crew was still probably</p> <p>17 rehabbing into the early afternoon. It just --</p> <p>18 I -- I wouldn't even speak on that until I had</p> <p>19 had time to think about it and -- and reflect on</p> <p>20 it and talk to the crew, talk to Faust.</p> <p>21 Q But just four days before, you had</p> <p>22 immediately reported to her within thirty-six</p> <p>23 minutes that you had heard a rumor that he was</p> <p>24 talking about you; correct?</p> <p>25 A These are two -- correct. But these</p>	<p style="text-align: right;">Page 2022</p> <p>1 are two separate situations you're talking</p> <p>2 about.</p> <p>3 Q Well, she's investigating that and you</p> <p>4 just -- you don't mention it here at all, the</p> <p>5 fire?</p> <p>6 A Correct, I don't mention the fire in</p> <p>7 here.</p> <p>8 Q Do you understand why that may appear</p> <p>9 suspicious when everything else you had reported</p> <p>10 was immediate about him?</p> <p>11 A No. I don't understand why that would</p> <p>12 seem suspicious.</p> <p>13 Q Faust didn't make you -- didn't force</p> <p>14 you to file a complaint, did he?</p> <p>15 A Faust advised me that I felt unsafe,</p> <p>16 that it was serious and needed to be addressed</p> <p>17 and had involved more people than just myself</p> <p>18 and Mahler at this point. And we communicated</p> <p>19 about it pretty extensively, if I remember</p> <p>20 right. He advised me that I should report this.</p> <p>21 Q He didn't force you to, did he?</p> <p>22 A He's my supervisor, and he advised me</p> <p>23 to do it.</p> <p>24 Q The question is, he didn't force you</p> <p>25 to, did he?</p>
<p style="text-align: right;">Page 2023</p> <p>1 A I don't know. No.</p> <p>2 Q Okay. You would expect Faust to take</p> <p>3 you at your word when you were talking to him</p> <p>4 about the fire?</p> <p>5 A Yes.</p> <p>6 Q Okay. And he never told you to lie,</p> <p>7 did he?</p> <p>8 A No.</p> <p>9 Q Okay. I want to look -- flip to</p> <p>10 Exhibit 17.</p> <p>11 MS. GUTTAU: So this is City 17.</p> <p>12 Let me get there.</p> <p>13 THE WITNESS: (Witness complies.)</p> <p>14 Q (By Ms. Guttau) We've talked about</p> <p>15 this before. This is the Prime report; correct?</p> <p>16 A Yes.</p> <p>17 Q Okay. And on page 3 at the bottom</p> <p>18 where it says T1C?</p> <p>19 A Yes.</p> <p>20 Q That paragraph by T1C is what you</p> <p>21 typed; correct?</p> <p>22 A Correct.</p> <p>23 Q And did you draft this document by</p> <p>24 yourself?</p> <p>25 A Yes.</p>	<p style="text-align: right;">Page 2024</p> <p>1 Q And did you understand it was a legal</p> <p>2 document?</p> <p>3 A Yes.</p> <p>4 Q You were not forced or told what to</p> <p>5 include, were you?</p> <p>6 A No.</p> <p>7 Q Okay. And did you include everything</p> <p>8 that you believed was significant from the</p> <p>9 warehouse fire?</p> <p>10 A I believe the Prime reports to be a</p> <p>11 log of tactical actions. And so I believed that</p> <p>12 I put in my tactical actions. So yes.</p> <p>13 Q Did -- you didn't mention Captain</p> <p>14 Mahler in it, did you?</p> <p>15 A I believe I did mention -- reference</p> <p>16 Truck 8.</p> <p>17 Q Okay. And let me clarify. You didn't</p> <p>18 mention Captain Mahler endangering you, did you?</p> <p>19 A No. I do not believe this is the form</p> <p>20 for that.</p> <p>21 Q You didn't mention any safety issues</p> <p>22 in your Prime report, did you?</p> <p>23 A No. Again, I do not believe this is</p> <p>24 the forum for that. I had not been trained that</p> <p>25 this was the forum for that anyways.</p>

<p style="text-align: right;">Page 2025</p> <p>1 Q So even if it's a big enough fact to</p> <p>2 you to include in your request to a federal</p> <p>3 judge to remove him from his job, you didn't</p> <p>4 think it was important enough to include in the</p> <p>5 Prime reports?</p> <p>6 A As I stated, I do not believe this was</p> <p>7 the forum for that. I believe that those</p> <p>8 concerns are near-misses or -- or outside --</p> <p>9 this -- I understood the Prime reporting system</p> <p>10 to be a collection and a timeline of -- of tasks</p> <p>11 and objectives completed at a fire. I've never</p> <p>12 had it explained to me other than that.</p> <p>13 Q Let's look at the middle of it where</p> <p>14 there's a sentence that starts with T1 was</p> <p>15 reassigned.</p> <p>16 A Okay. I see it.</p> <p>17 Q It says, T1 was reassigned to assist</p> <p>18 T8 with ventilation. T1 assisted T8 with</p> <p>19 opening another overhead door.</p> <p>20 And so you indicated that that's what you</p> <p>21 did and you did know and complete your</p> <p>22 assignment of opening an overhead door; correct?</p> <p>23 A Our -- our extent -- Truck 1's extent</p> <p>24 on that was just making sure that there was</p> <p>25 clear -- clear -- like, that the door was clear</p>	<p style="text-align: right;">Page 2026</p> <p>1 on the back side of it.</p> <p>2 Q And you did complete that?</p> <p>3 A Making sure it was clear?</p> <p>4 Q Yes.</p> <p>5 A Yes. The door opened as we were</p> <p>6 arriving to it.</p> <p>7 Q Okay. Did you secretly tape-record</p> <p>8 conversations with Chief Majors about incident</p> <p>9 command systems?</p> <p>10 A I recorded many of my conversations</p> <p>11 with command staff.</p> <p>12 Q Okay.</p> <p>13 A I wouldn't call it secretly. I think</p> <p>14 everybody knew that I recorded my discussions</p> <p>15 with command staff.</p> <p>16 Q Did you always tell them you were</p> <p>17 recording?</p> <p>18 A No. Several times I just would put my</p> <p>19 phone on record and set it on the table, as they</p> <p>20 did the same.</p> <p>21 Q Did you tell Chief Majors you were</p> <p>22 recording him?</p> <p>23 A I do not recall.</p> <p>24 Q Let's talk about -- let's turn to</p> <p>25 Exhibit Gerdes report, which is 11.</p>
<p style="text-align: right;">Page 2027</p> <p>1 MS. GUTTAU: Exhibit 11.</p> <p>2 THE WITNESS: (Witness complies.)</p> <p>3 Okay.</p> <p>4 Q (By Ms. Guttau) Backing up from that.</p> <p>5 You testified in your direct that, when you</p> <p>6 filed your lawsuit, your attorneys told you that</p> <p>7 the news can pick it up; correct? Do you recall</p> <p>8 that?</p> <p>9 A Are you talking about the first time I</p> <p>10 testified in arbitration?</p> <p>11 Q Yes. In your direct, I had down that</p> <p>12 you testified to that.</p> <p>13 A Restate it, please.</p> <p>14 Q Yeah. In your direct, you testified</p> <p>15 that, when you filed your lawsuit, your</p> <p>16 attorneys told you that the press can pick it</p> <p>17 up.</p> <p>18 A Yes. Sometimes they told me that</p> <p>19 filings could end up in the news kind of a</p> <p>20 heads-up because it gave me a lot of anxiety any</p> <p>21 time it would happen.</p> <p>22 Q And yours was the third within a kind</p> <p>23 of a two years period of time that was filed by</p> <p>24 a firefighter against LFR; correct?</p> <p>25 A Yeah. I think -- I think it's three</p>	<p style="text-align: right;">Page 2028</p> <p>1 out of four maybe with fire. And I think</p> <p>2 there's eleven total between police and fire. I</p> <p>3 believe there's just four firefighters.</p> <p>4 Q Okay. And you understood that the</p> <p>5 prior lawsuits, including the one Mr. Giles</p> <p>6 testified, had been reported in the courts;</p> <p>7 correct?</p> <p>8 A Yes.</p> <p>9 Q And the courts, before you filed your</p> <p>10 motion for injunction -- I'm sorry. The papers</p> <p>11 had reported on their lawsuits.</p> <p>12 Let me clarify that question because I</p> <p>13 think I misstated that. You were aware that the</p> <p>14 papers had reported on the Giles lawsuit;</p> <p>15 correct?</p> <p>16 A To some extent. I guess I'm not sure</p> <p>17 if every single filing is reported by the news.</p> <p>18 So --</p> <p>19 Q And the newspaper had reported about</p> <p>20 your lawsuit on various occasions; correct?</p> <p>21 A At some point, yes.</p> <p>22 Q Okay. And so you realized it would be</p> <p>23 likely that the paper could pick up a serious</p> <p>24 allegation that you're alleging that Captain</p> <p>25 Mahler, defendant in this lawsuit, had been --</p>

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1 had abandoned you in a dangerous warehouse fire?

2 You knew that was a possibility?

3 A For the -- for the filing for the --

4 Q For the papers to pick that up?

5 A For the motion for injunction?

6 Q Yes.

7 A I guess, yeah, probably.

8 Q Okay. So if you were outraged by what

9 you called public attacks by Matt Woitalewicz

10 made at the fire station, you surely recognized

11 the seriousness of this public attack, don't

12 you, against Captain Mahler?

13 A I don't view it as a public attack. I

14 view it as me having the right to -- having the

15 right to stand up for what I believe are

16 violations of my civil rights.

17 Whether you view it as an attack

18 against an individual is irrelevant to me

19 because this is my right to pursue. So I don't

20 -- as far as I'm concerned, I -- I could care

21 less about the negative repercussions that the

22 media might have for me or Shawn Mahler because

23 I have an obligation to stand up for myself and

24 my rights.

25 Q Okay. You don't have a right to make

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1 false accusations though, do you?

2 A I guess that's a weirdly worded

3 question. I think, should people make false

4 accusations? No. But could you reword that? I

5 don't think that's a --

6 Q Do you think it's appropriate to

7 publicly make false accusations?

8 A No, I do not.

9 Q I want to talk about the Gerdes report

10 now, R11. So as we established earlier, you had

11 requested an independent investigator; correct?

12 A Correct.

13 Q To your knowledge, Ms. Gerdes was not

14 a City lawyer, was she?

15 A No, she was not.

16 Q She's from an outside firm?

17 A Correct. And if you -- so I Googled

18 -- I did an internet search on Torrey Gerdes

19 when I was -- found out that she would be the

20 person that would be investigating this. And on

21 their website it's clear that they -- the firm

22 represents employers in defense of litigation in

23 reference of this -- the types of litigation

24 like I brought forth.

25 Q Okay. And so you assumed that made

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1 her biased?

2 A That's my opinion.

3 Q Okay. And you've accused her of

4 manipulating the auto recording of your

5 interview; correct?

6 A I believe I brought -- I believe my

7 attorney notified City Law that there was issues

8 with the recording. And City Law was given a

9 list of anomalies in the recording where

10 portions of my audio skipped and cut out. And

11 then I was talking about something completely

12 different.

13 I do not know if there was ever any

14 response about this. And then later on, I think

15 it might have been my pre-disciplinary hearing.

16 Could have been. I brought up my concern and

17 supplied a list of these anomalies to Chief

18 Engler, and I can't remember exactly. But I --

19 I pointed out that I believed that it hadn't

20 been preserved properly. I didn't know if it

21 had been edited. But I believe that if -- if

22 those recordings were going to be used against

23 me, that they should have at least been properly

24 preserved so that things that I said wouldn't be

25 able to be taken out of context or

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1 misrepresented. That was my stance about those.

2 MS. GUTTAU: So let's turn to

3 Exhibit 139.

4 THE WITNESS: (Witness complies.)

5 Q (By Ms. Guttai) So at the bottom, it

6 will be page 7, but it's transcript page 25. So

7 transcript page 25, you stated in that first

8 line, someone has also edited the recordings.

9 Before that you were referring to Gerdes

10 recordings. So are you alleging that she's the

11 one that edited the recording?

12 A Just a second. Okay. So the next --

13 on the next page, page 26, it said, so that's an

14 example of chunks of my audio that have not been

15 properly preserved in this process. As you can

16 see, like I said, I'll provide this to you. I'm

17 assuming that's what that is supposed to say.

18 There's a significant amount of my audio that

19 has not been preserved from this interrogation.

20 I believe -- because I believe someone

21 edited the recording, these noticeable skips

22 include the one I just played for you. I

23 thought I was hearing things as I was listening

24 to them but realized what I was hearing didn't

25 line up with the questioning and there were

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1 Q Okay. If discipline has been reversed
2 and removed from a firefighter's file, what is
3 the union's position on whether or not that
4 should be used against them in the future?

5 A I guess I'm not sure exactly what
6 you're talking about.

7 Q So if Captain Mahler had a reprimand
8 that was later reversed and removed from his
9 file, as a Union representative you wouldn't
10 want the chief to count those reversed and
11 removed disciplines against a Union member,
12 would you?

13 A I wouldn't think so.

14 Q Okay.

15 THE ARBITRATOR: What's the
16 relevance?

17 MS. GUTTAU: Well, I think
18 because they were trying to offer that for
19 credibility. And it seems like they're
20 reversing a position to support Ms. Benson
21 against another Union member in a way that will
22 be detrimental to all Union members.

23 MR. CORRIGAN: If I could speak
24 to that, I would like to.

25 THE ARBITRATOR: There's no

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1 question to you, sir. All right.

2 Well, go ahead. I'll try to
3 follow.

4 MS. GUTTAU: Okay. That was all
5 my questions on that.

6 Q (By Ms. Guttau) Benson's complaints
7 have been the reason -- as you heard the
8 testimony today that several of your Union
9 members were removed from their stations for a
10 time or placed on leave; correct?

11 A Correct.

12 Q Captain Roof is a Union member;
13 correct?

14 A Correct.

15 Q Matt Woitalewicz?

16 A Correct.

17 Q And Captain Mahler?

18 A Yes.

19 Q Okay. And there were questions --
20 this is way back in August -- or sorry, June,
21 where Mr. Corrigan asked Chief Engler if the
22 removal of the firefighters for discipline is
23 about the same as like a USAR deployment.

24 But USAR deployments are just fourteen
25 days usually; correct?

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1 A I'm not a part of USAR. We don't
2 represent them. I don't know.

3 Q Okay. USAR penalties aren't punitive,
4 are they?

5 A No.

6 Q No. Okay. Is removal of your Union
7 members from their stations for disciplinary
8 investigations viewed as punitive by your
9 members?

10 A It probably is by our members.
11 Typically it's for their own protection, for
12 their own good.

13 Q Does the Union push for cohesion in
14 having their people stay together at stations
15 they work at?

16 A Of course.

17 Q Okay. Can it affect your Union
18 member's morale when they are moved away from
19 their crew?

20 A Yes. I suppose it can.

21 Q Okay. A couple of weeks ago, Ms.
22 Benson testified that she had concerns about
23 Chief Faust's stories, and she suggested he was
24 retaliated against when Chief Majors was
25 promoted before him. But you had told even on

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1 behalf of -- as a Union president had told Chief
2 Engler at the time that Mark Majors was the guy
3 to promote; correct?

4 A I did.

5 Q Okay. There was no conspiracy theory
6 as far as you were aware to keep Faust out, was
7 there?

8 A No. Not at all.

9 Q You sat in on the thirteen hours or so
10 of the interview by Torrey Gerdes with Ms.
11 Benson; correct?

12 A I did.

13 Q Okay. Did you believe in what you
14 observed that Ms. Gerdes conducted herself in a
15 manner that appeared to you to be fair and
16 impartial?

17 A Yeah. I thought it was ridiculous you
18 can ask somebody that many -- same questions
19 that many times to keep somebody in there for
20 thirteen hours.

21 But I -- I think Amanda was honest,
22 and I think it was a -- very thorough.

23 Q Okay. She claims that Ms. Gerdes
24 manipulated the audio taping. Did you see --
25 did you ever observe any behavior by her that

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1 But the -- but we do find out that -- that there
 2 is validity to the things that the -- the issues
 3 she's had in those cases. At least to some
 4 extent.
 5 THE ARBITRATOR: Was there like
 6 discriminatory allegations? Is that what you're
 7 talking about?
 8 THE WITNESS: In my opinion, I
 9 wouldn't say discriminatory. I would say more
 10 to -- to find a word for it. More things that
 11 shouldn't be said. Maybe more is to -- you
 12 know, if they don't like her or things about
 13 her, not necessarily her being a woman or
 14 anything else, but more -- more --
 15 THE ARBITRATOR: Personality
 16 clashes?
 17 THE WITNESS: Right.
 18 THE ARBITRATOR: Okay. Okay.
 19 I'm good -- I'm good with that. Go ahead.
 20 REDIRECT EXAMINATION
 21 BY MS. GUTTAU:
 22 Q Okay. Just a couple of follow-up also
 23 on that same vein.
 24 You didn't -- the Union didn't
 25 investigate Ms. Benson's allegations against the

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1 her?
 2 A No.
 3 Q Okay. Same with Brady Papik, you are
 4 not claiming that he discriminated or
 5 retaliated?
 6 A No.
 7 Q And you haven't investigated her
 8 complaints against Captain Mahler, have you?
 9 A No.
 10 Q How about the complaints against the
 11 City work comp administrators, did the Union
 12 look into that at all?
 13 A I don't think we were ever informed of
 14 that.
 15 Q Okay. You stated after the
 16 pre-disciplinary hearing, you had the impression
 17 it was just a difference of opinion between two
 18 employees. But it wasn't just two employees.
 19 It was Ms. Benson's story versus Mahler and the
 20 other members of the crew, which are all Union
 21 members; correct?
 22 A Correct.
 23 Q Okay. And no reason to think that
 24 they're not credible?
 25 A No. I think they're credible.

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1 former mayor, the current mayor, Chief Jones,
 2 Chief Linke, Chief Benisch, Captain Merryman,
 3 Dan McDaniel, or Tom Cassidy, did it?
 4 A We did not.
 5 Q Okay. So you don't have an opinion on
 6 the credibility of those, do you?
 7 A I don't.
 8 Q Okay. And you don't -- the Union
 9 didn't investigate the allegations against Chad
 10 Roof, did you?
 11 A No.
 12 Q Or the ones against Matt Woitalewicz?
 13 A We aren't in the investigatory
 14 business so much.
 15 Q Okay. So when you say you think they
 16 could have some basis, you don't -- you haven't
 17 done any investigations?
 18 A Only -- only what I hear from those
 19 members.
 20 Q Okay. You don't have any -- is the
 21 Union claiming that Chad Roof and Matt
 22 Woitalewicz discriminated against Ms. Benson?
 23 A I wouldn't say it's discrimination.
 24 Q That Brady Papik -- are you claiming
 25 that Roof or Matt Woitalewicz retaliated against

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1 Q Okay. And so at that point this one
 2 versus eight story, she had gone public with it
 3 and accused Captain Mahler of abandoning her in
 4 a public filing, hadn't she?
 5 A Yeah.
 6 Q And that's a really serious violation
 7 for a firefighter?
 8 A Oh, it certainly is.
 9 Q It affects their career and their
 10 reputation?
 11 A It does.
 12 Q Is trust critical in firefighting?
 13 A It is.
 14 Q If Matt Roberts and Morgan Hurley
 15 testified that they would have concerns about
 16 returning to work with her, do you take those
 17 Union members' concerns seriously?
 18 A Of course.
 19 Q Okay. You stated that it was voted
 20 unanimously to pursue the arbitration.
 21 MR. CORRIGAN: No, he did not say
 22 that.
 23 MS. GUTTAU: He did. Yeah, he
 24 did. Yeah.
 25 MR. CORRIGAN: Then I withdraw

<p style="text-align: right;">Page 2081</p> <p>1 that. I thought he said --</p> <p>2 Q (By Ms. Guttau) Didn't you?</p> <p>3 A I think so. Yeah.</p> <p>4 Q Okay. And my question is, when you</p> <p>5 say unanimous, who are you referring to?</p> <p>6 Like --</p> <p>7 A Our ten executive board members.</p> <p>8 Q Okay. And so who are -- Do you know</p> <p>9 who those ten are?</p> <p>10 A We have Ryan, of course, Ryan Moser,</p> <p>11 Phil Lewiston, Aletha Burt, Marie Hillabrand,</p> <p>12 Mike Wright, Trevis Schroeder, Andy Evans, Nate</p> <p>13 Caldwell, and myself, of course.</p> <p>14 Q Okay. And so your testimony is that</p> <p>15 they unanimously voted to pursue this</p> <p>16 arbitration?</p> <p>17 A Yes.</p> <p>18 Q And you didn't put it to the vote of</p> <p>19 the membership, did you?</p> <p>20 A That's not the way our process works.</p> <p>21 Q Okay. Has Ms. Benson threatened to</p> <p>22 sue the Union?</p> <p>23 A I don't believe so.</p> <p>24 Q Okay. Not at any time has she or her</p> <p>25 attorneys threatened to sue the Union?</p>	<p style="text-align: right;">Page 2082</p> <p>1 A No. I don't believe we've had that</p> <p>2 threat.</p> <p>3 Q Any communications to that effect?</p> <p>4 A No. Kelly Brandon always concerns me,</p> <p>5 but not to that effect.</p> <p>6 Q And Kelly is her attorney?</p> <p>7 A Yeah.</p> <p>8 MS. GUTTAU: Nothing further.</p> <p>9 THE ARBITRATOR: All right. So</p> <p>10 where are we?</p> <p>11 MS. GUTTAU: We are done.</p> <p>12 MR. CORRIGAN: We're done.</p> <p>13 THE ARBITRATOR: No way.</p> <p>14 MR. CORRIGAN: Way.</p> <p>15 THE ARBITRATOR: All right.</p> <p>16 THE REPORTER: Are we on or off?</p> <p>17 MR. CORRIGAN: Off.</p> <p>18 (On September 6, 2022, at 3:35</p> <p>19 p.m., the proceedings concluded.)</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p style="text-align: right;">Page 2083</p> <p>1 C E R T I F I C A T E</p> <p>2 S T A T E O F N E B R A S K A)</p> <p>3)ss</p> <p>4 C O U N T Y O F D O U G L A S)</p> <p>5 Quinn's Quality Reporting, Ltd, Certified</p> <p>6 Court Reporters and General Notary Publics for</p> <p>7 the State of Nebraska, do hereby certify that</p> <p>8 the hearing as above set forth was reduced to</p> <p>9 print by transcription of our machine shorthand</p> <p>10 notes;</p> <p>11 That the within and foregoing hearing was</p> <p>12 taken by us at the time and place herein</p> <p>13 specified;</p> <p>14 That we are not counsel, employee or relative</p> <p>15 of either party or otherwise interested in the</p> <p>16 event of this suit.</p> <p>17 IN TESTIMONY WHEREOF, on behalf of Quinn's</p> <p>18 Quality Reporting, Ltd, I have placed my hand</p> <p>19 and seal this 3rd day of October, 2022.</p> <p>20</p> <p>21 VICKIE L. QUINN</p> <p>22 GENERAL NOTARY PUBLIC</p> <p>23</p> <p>24</p> <p>25</p>	